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HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA  
*Legislature*



STATE CAPITOL  
ROOM 3191  
SACRAMENTO, CALIFORNIA

THURSDAY, JUNE 6, 1996  
11:30 A.M.



1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 3191

12 SACRAMENTO, CALIFORNIA

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16 THURSDAY, JUNE 6, 1996

17 11:30 A.M.

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25 Reported by

26  
27 Evelyn J. Mizak  
28 Shorthand Reporter





APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair  
SENATOR ROBERT BEVERLY, Vice Chair  
SENATOR RUBEN AYALA  
SENATOR JOHN LEWIS  
SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer  
PAT WEBB, Committee Secretary  
RICK ROLLENS, Consultant on Bill Referrals  
NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

GEORGE M. GALAZA, Warden  
North Kern State Prison at Delano  
Department of Corrections  
FRANK SEARCY, President  
Chicano Correctional Workers Association  
GEORGE NICHOLAW, Member  
California Horse Racing Board  
ROD BLONIEN  
Thoroughbred Owners of California  
Horsemen's Quarterhorse Racing Association  
Cal Western Appaloosa Association  
RALPH M. SCURFIELD, Member  
California Horse Racing Board  
CAROLYN PAGE  
Alleged Assault Victim at Hollywood Park



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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Good afternoon. Did you wish to begin with any opening comment at all?

MR. GALAZA: First of all, you asked me to be here today, in front of the Committee and in front of the Chairman, and I'm prepared to answer questions.

CHAIRMAN LOCKYER: You've been Warden there now since, what, last fall. Prior to that, various positions in the Department. Could you review those quickly for us?

MR. GALAZA: Sure. I have a total of seventeen years of state service. The first three years was with the California Youth Authority, and the remaining fourteen years have been with the Department of Corrections.

And in those seventeen years, I have worked at approximately six different institutions, plus a stint in Headquarters. The assignments have run the gamut of positions in rank and file, supervisorial, and managerial.

Prior to becoming the Warden in North Kern State Prison, my assignment was as a Chief Deputy Warden at the California Institution for Men in Chino.

CHAIRMAN LOCKYER: All right. You have, like all of the prisons, some overcrowding in your facility. Does it cause you any specific problems or anxieties that you might want to tell us about?

MR. GALAZA: Well, overcrowding's always a concern in terms of the control of the inmates, and also in terms of programming, but one of the things we've been very successful at

1 in terms of dealing with the overcrowding issue is in providing  
2 programs and activities for the inmates.

3 I think one of the basic philosophies of the Department  
4 Director and myself in my assignments is that it is very  
5 important that the inmates do not have so much leisure time that  
6 it becomes a concern. So to that end, we provide a variety of  
7 assignments in terms of vocational and educational opportunities.  
8 We also have a variety of assignments in terms of work  
9 activities. To the extent that out of a total -- our average  
10 population averages approximately 4,400, with the Reception  
11 Center included. I have over 92 percent of my inmates employed  
12 in either gainful occupation, or they're attending a vocational  
13 or academic program.

14 CHAIRMAN LOCKYER: How much of the day would that occupy?

15 MR. GALAZA: That would occupy -- actually, it occupies a  
16 full 16 hours, if you take into consideration that some of the  
17 assignments overlap into what we would call Third Watch;  
18 basically a 2:30 to 10:30 position.

19 So, there's quite a bit of activity time. There's quite a  
20 bit of actual assignment time.

21 And in terms of leisure time activities, we've got --  
22 there's a variety of leisure time activities that most prisons  
23 have, which are the televisions, of course, and the usual things  
24 that are provided. But we also have a couple of other things  
25 that I think are relatively unique, and that is the Literacy  
26 Program.

27 We have currently about 20 inmates, 20 tutors, that we  
28 have trained to tutor other inmates in the area of reading. And

1 the majority of the tutelage comes on the Third Watch shift,  
2 basically an evening shift. And so, those inmates also take up  
3 quite a bit of the slack on quite a bit of the time that would  
4 normally be spent watching television, or writing letters, and  
5 what-have you, tutoring inmates in terms of their literary  
6 capacities.

7 CHAIRMAN LOCKYER: How many involved in that?

8 MR. GALAZA: Well, we have about 20 tutors right now.

9 CHAIRMAN LOCKYER: And the students?

10 MR. GALAZA: These are students.

11 CHAIRMAN LOCKYER: How many students do they tutor?

12 MR. GALAZA: They're tutoring anywhere from 50 to 70 at  
13 this point in time. We're hoping to expand that as time goes on.

14 CHAIRMAN LOCKYER: Have you heard of or seen other  
15 literacy programs that seem to have successful outcomes in any of  
16 the prison settings? Is this a thing commonly discussed  
17 throughout the system?

18 MR. GALAZA: I think at this point in time, the tutoring  
19 and the literacy programs are a very big topic of discussion  
20 within the Department. And I know, to the extent that I have  
21 talked to other wardens, that many other wardens are involved in  
22 this program at this point in time, because it basically, it  
23 serves a dual purpose. It does expand the scope of activities  
24 within the institution, it does provide for relatively calmer  
25 program, but on the other side of the coin, it also helps the  
26 inmates. And it provides them with the ability to have a  
27 structured reading program, a level of opportunity to get a level  
28 of comprehension that, perhaps, they might not have otherwise.



1 And again, whether they're doing three years, fifteen  
2 years, a year-and-a-half, one would hope that some of the skills  
3 that they may pick up within the system can be translated to  
4 making them better people once they're leased in the community.

5 CHAIRMAN LOCKYER: Are there questions from Members at  
6 all?

7 SENATOR AYALA: Mr. Galaza, I'd like to ask you about the  
8 over-time at the North Kern facility.

9 You have one of the largest in the state, 164.7 million  
10 for '93-94. You weren't there at the time, in '93-94?

11 MR. GALAZA: No, I was initially at North Kern State  
12 Prison during the activation in 1993.

13 SENATOR AYALA: Is the policy of giving senior members  
14 first option on over-time? They get paid more, of course, if  
15 they get more over-time, as opposed to junior members who have to  
16 wait until the seniors refuse the over-time, or they can't do it.

17 What is the policy at the institution for over-time?

18 MR. GALAZA: Well, the policy that we have at the  
19 institution for over-time is that which the Director has  
20 mandated, and basically that is, to manage over-time hours at the  
21 minimum hours allowed to maintain the safety and security of the  
22 prison.

23 So, my mandate is to ensure that I hold over-time dollars  
24 down to that minimum. To that end, we have a number of methods  
25 that we deal with that. Some of the methods are governed by  
26 contractual responsibilities, particularly the bargaining Unit 6.

27 Your question concerning the seniority, where the  
28 seniority issues comes into play, and yes, under those



1 contractual obligations, over-time shifts that are available  
2 would tend to go toward the most senior member.

3         However, we have other ways of controlling the over-time  
4 in that area, so that on many, many occasions, that doesn't even  
5 become a necessity. And some of those ways, of course, are  
6 basically how you post your position; basically how you provide  
7 the relief position to attend to the full-time positions. Also  
8 it includes the usage of permanent intermittent employees, which  
9 come in at a much lower dollar figure.

10         So, we try to use a variety of means prior to actually  
11 filling an over-time position with the most senior individual.  
12 And again, that's a cost savings issue.

13         SENATOR AYALA: Is that contractual agreement with CCPOA  
14 that determines how the over-time is given to the staff?

15         MR. GALAZA: In terms of seniority?

16         SENATOR AYALA: You don't have much control over that,  
17 then.

18         MR. GALAZA: Well, the control, as I said, comes from our  
19 abilities to manage those over-time dollars through the means  
20 that I explained. It's still a factor.

21         SENATOR AYALA: Who gets the over-time is determined by  
22 negotiating with CCPOA.

23         MR. GALAZA: By the contractual responsibilities that we  
24 have with them, correct.

25         SENATOR AYALA: I always ask everyone coming for  
26 confirmation about the drugs, and the inmates' usage themselves.  
27 I'm always amazed to find out so much trafficking going on.

28         I'm told that at the CRC, there's more drugs inside and

1 outside the prison, and I don't understand how that happens? I  
2 know that we've tried sniffing dogs in Chino, and the bleeding  
3 hearts people decided that was a little offensive to the people  
4 coming to visit. But it served a purpose, as far as I'm  
5 concerned.

6 As it is today, I'm still told that a lot of drugs are  
7 within the confines of the prison facility, and that inmates are  
8 involved to a good extent.

9 Is that true, that you're aware of?

10 MR. GALAZA: There are drugs within the confines of the  
11 facilities. And drug trafficking and contraband trafficking  
12 within facilities are, of course, a major concern for those of us  
13 that have that managerial responsibility to run a prison.

14 We take that very seriously. To that end, what we've done  
15 is that, under the premises of the Penal Code and under policy,  
16 we practice contraband surveillance and drug surveillance on a  
17 constant 24-hour basis.

18 There's a number of opportunities for contraband to enter  
19 the facilities because there's interaction with visitors, there's  
20 interaction with staff, there's interaction with volunteers.

21 But to that end, we identify all those areas that have the  
22 greatest possibility for the introduction of contraband, and also  
23 the leaving of contraband, because certainly, as much as I don't  
24 want contraband in my facility, I don't want to be a vehicle for  
25 contraband going to other facilities or out to the community on a  
26 parole.

27 So to that end, we provide training to all our staff.  
28 When I say all our staff, I mean all our staff, not just the

1 peace officers, but the ancillary staff also. To that end, in  
2 terms of recognizing contraband, to assist us in our detection,  
3 to the peace officers specifically, the recognition of  
4 contraband, how it comes in. And then we set into place policy  
5 that will allow us to routinely and regularly search and review  
6 all areas where the possibility of contraband can be.

7 And that's a 24-hour job. It's not something that we  
8 begin at 8:00 o'clock in the morning and end at 4:30 in the  
9 afternoon.

10 SENATOR AYALA: We don't hear very much any more about  
11 escapees. I know it happens quite a bit. CIM was like a  
12 revolving door there for awhile until it toughened up, and we had  
13 the perimeter fence at CIM, in which I was involved in pushing  
14 for that money for those within the area where they hang around,  
15 not the working area.

16 The last one that escaped from Chino was from the farming  
17 area up there, where they were involved in the minimum security  
18 area. But since they put that perimeter fence up, there's been  
19 very few, if any, escapees.

20 How about your facility? Are you quite able to control  
21 that, the escapees, than you were before?

22 MR. GALAZA: Well, I think that the issue of the  
23 electrified fence has certainly added to the security of the  
24 prison.

25 But I am always reminded that no matter how many fences we  
26 may have, in all honesty, it's no substitute to making sure that  
27 your policies in how you govern inmates, your policies and your  
28 programs are sound and as tight as possible.



1 And I honestly believe that the issue of training the  
2 staff, the issue of policy, the issue of being totally aware of  
3 your programming needs and functions out there, is almost as  
4 important as having those fences around the prison.

5 And I think the two in conjunction with each other is what  
6 makes that a safe institution for the community.

7 SENATOR AYALA: I agree with your statement, that no  
8 matter how many fences you build, there'll be someone escaping  
9 from the toughest prison in the world.

10 MR. GALAZA: Policy's extremely important, and the  
11 governing of those policies.

12 SENATOR AYALA: Thank you.

13 CHAIRMAN LOCKYER: Are there further questions?

14 I might ask for anyone who wishes to comment. I think  
15 it's unnecessary, and we'll be moving along here expeditiously,  
16 but last opportunity to ask a question before I call on Senator  
17 Beverly.

18 Yes, sir.

19 MR. SEARCY: Thank you again for allowing me this  
20 opportunity to speak on behalf of Mr. Galaza.

21 I am Frank Searcy, President of the Chicano Correctional  
22 Workers Association.

23 At this moment, I'd like to interrupt myself, and want to  
24 share with you that my colleague, Willy Nabory, the President of  
25 the Black Correctional Workers Association, also intended to be  
26 here. In fact, he's probably at the Sacramento Airport right  
27 now. He, unfortunately, received the incorrect time of 1:30.

28 But I have spoken with him, and he has shared with me in

1 the past that what I am going to share with you, his association  
2 also is of the same opinion.

3 What I'd like to share with you is that the Chicano  
4 Correctional Workers Association supports Mr. Galaza, and as  
5 described already, his administrative ability is without  
6 question. And his 17 years of state service, and when they add  
7 that, and remind that that has been in both the -- what we refer  
8 to as the custodial classification in the institution and the  
9 noncustodial classifications also, which gives him more of a  
10 broader, rounded experience to be able to administer an  
11 institution.

12 So with that, again, thank you very much.

13 CHAIRMAN LOCKYER: Thank you very much.

14 We also, I might note for the record, have a letter from  
15 Senator Costa, who is a very strong advocate for the  
16 confirmation.

17 Senator Beverly.

18 SENATOR BEVERLY: Move we recommend confirmation.

19 CHAIRMAN LOCKYER: All right, we have that motion before  
20 us. If you'd call the roll, please.

21 SECRETARY WEBB: Senator Ayala.

22 SENATOR AYALA: Aye.

23 SECRETARY WEBB: Ayala Aye. Senator Lewis.

24 SENATOR LEWIS: Aye.

25 SECRETARY WEBB: Lewis Aye. Senator Petris.

26 SENATOR PETRIS: Aye.

27 SECRETARY WEBB: Petris Aye. Senator Beverly.

28 SENATOR BEVERLY: Aye.



1 SECRETARY WEBB: Senator Lockyer.

2 CHAIRMAN LOCKYER: Aye.

3 SECRETARY WEBB: Lockyer Aye. Five to zero.

4 CHAIRMAN LOCKYER: Thank you, sir. Good luck to you.

5 MR. GALAZA: Thank you. On behalf of myself, my family,  
6 and the Department of Corrections, I thank you, Mr. Chairman, and  
7 the Members of this Committee.

8 CHAIRMAN LOCKYER: Mr. Nicholaw is next. Good afternoon.  
9 Nice to see you again.

10 MR. NICHOLAW: Good afternoon, everybody.

11 CHAIRMAN LOCKYER: Do you want to start with any opening  
12 comment about the Horse Racing Board duties and why you want to  
13 keep doing that?

14 MR. NICHOLAW: Mr. Chairman, four years ago, I came before  
15 this Committee, and I said I was really looking forward to this  
16 opportunity. And I found that I really liked it.

17 CHAIRMAN LOCKYER: Oh, good.

18 MR. NICHOLAW: I really did. It's been an eye-opening  
19 experience. It's a wonderful opportunity to contribute to the  
20 well being of the State of California, and I've really enjoyed  
21 it.

22 CHAIRMAN LOCKYER: I guess we might ask some of the  
23 questions we routinely look into with respect to these  
24 appointees. Of course, you're unlike, say, a warden who, that's  
25 not only his full-time job, but probably a couple of jobs.

26 MR. NICHOLAW: Right.

27 CHAIRMAN LOCKYER: We're relying on citizens like yourself  
28 to help as, in effect, volunteers to make the state better. And

1 I think we're appreciative of the fact that you're willing to do  
2 that.

3 Do you have any sort of general sense about the direction  
4 of horse racing in California, and what you would regard as the  
5 most significant problems or concerns that we should consider for  
6 the future?

7 MR. NICHOLAW: Well, as every industry today is facing  
8 greater and greater challenges, the horse racing industry in the  
9 State of California is a tremendous revenue producer for the  
10 state, and its challenges are growing by the day.

11 And it really is the responsibility of all of us on the  
12 Horse Racing Board to see how we can grow the industry in the  
13 days ahead, and I think that is our biggest effort right now.

14 CHAIRMAN LOCKYER: Anything that looks like it might be  
15 successful?

16 MR. NICHOLAW: Well, it really depends, I think, on a lot  
17 of things, including the gaming industry from the standpoint of  
18 what's transpiring with the Indian casinos, and what-have you  
19 from that area.

20 CHAIRMAN LOCKYER: There often have been complaints about  
21 illegal medications, and drug testing, and things of that sort.

22 Is that a matter that comes before you as a Board member  
23 with any regularity?

24 MR. NICHOLAW: It does come before the Board, you know,  
25 generally speaking, because every time there is a positive, you  
26 are informed about that.

27 I'm a member of the Medication Committee, and during the  
28 past four years, great strides have really been made in trying to

1 provide the best possible results that they can get in the  
2 testing process. And I think that that has been emulated across  
3 the nation by other racing boards because of what we have done  
4 here in the State of California.

5 CHAIRMAN LOCKYER: So, it's your feeling that at least the  
6 misuses are getting better policed?

7 MR. NICHOLAW: Oh, absolutely. There's no question about  
8 that.

9 CHAIRMAN LOCKYER: Are there any questions from Members?  
10 Senator Ayala.

11 SENATOR AYALA: I'd like to ask him about the card rooms.

12 Card rooms are spreading all over now, and I just wonder,  
13 what are your feelings about having the card rooms within the  
14 premises of the race track?

15 MR. NICHOLAW: Well, they are trying that right now at  
16 Hollywood Park. They have a casino there, and I think generally  
17 speaking, it has been helpful to the horse racing industry,  
18 having that additional venue there at the same facility, because  
19 they do provide the opportunity for people that participate at  
20 the casino the opportunity to place bets in that facility for the  
21 races that are being run at Hollywood Park.

22 SENATOR AYALA: The perception up here is that race tracks  
23 are okay, and racing's on the up-and-up, and now you're merging  
24 them with casinos and other types of gambling.

25 MR. NICHOLAW: Well, it's not exactly a merger. It's  
26 really another venue of gambling within the same area. And it  
27 hasn't been -- I don't think it has been detrimental at all. I  
28 think it has been very helpful to growing horse racing because of



1 the interest of those that attend the casino to the horse racing  
2 industry.

3 SENATOR AYALA: They're all the same people?

4 MR. NICHOLAW: Well --

5 SENATOR AYALA: There's no detrimental effect on the race  
6 track?

7 MR. NICHOLAW: I mean, there -- I really don't know what  
8 exactly the figures are at the casino right now, but I would  
9 think that the impact against Hollywood Park would have been felt  
10 by this time, and I don't see any evidence of that.

11 SENATOR AYALA: You don't have percentage either?

12 MR. NICHOLAW: No, because they have expanded their  
13 revenues during the past three or four years.

14 SENATOR AYALA: In Southern Cal., that's the only track  
15 that has the --

16 MR. NICHOLAW: The only one that I'm aware of. I'm sure  
17 there isn't any that has a casino built on the facility.

18 CHAIRMAN LOCKYER: As not a regulator, but, I guess, sort  
19 of an employer in a way, do you have responsibilities to evaluate  
20 any number of employees that work for the Board or the --

21 MR. NICHOLAW: Yes, we -- there is an evaluation that goes  
22 on by the staff on a constant basis. All the members of the  
23 Board are informed by the stewards as to all types of activity  
24 that is against policy on a weekly basis. Every single week, you  
25 get a, you know, a stack of mail, detailing exactly what  
26 transpires each day at every racing association in the state.

27 CHAIRMAN LOCKYER: What kind of issues come up?

28 MR. NICHOLAW: Well, for example, if somebody has been

1 rude to a security person, that comes up. If somebody is in an  
2 area where they aren't supposed to be, that comes up. Any number  
3 of areas that involve the department of everybody that is  
4 licensed by the Horse Racing Board.

5 CHAIRMAN LOCKYER: Now, do you have to then periodically  
6 evaluate stewards, and so on? Is that part of your --

7 MR. NICHOLAW: Yes, staff does that.

8 CHAIRMAN LOCKYER: Do those ever come before the Board?

9 MR. NICHOLAW: They come for approval each year before the  
10 Board.

11 CHAIRMAN LOCKYER: All right. Other questions?

12 Is there anyone present who wishes to add any additional  
13 comment? There are a couple coming forward here.

14 MR. NICHOLAW: Oh, my God.

15 MS. PAGE: There's so much noise in the back, I'm not  
16 sure, is this Mr. Scurfield?

17 CHAIRMAN LOCKYER: No, Mr. Scurfield is over there.

18 MS. PAGE: Okay, so this is Mr. Nicholaw?

19 CHAIRMAN LOCKYER: Yes.

20 MR. BLONIEN: Thank you, Mr. Chairman and Members.

21 Rod Blonien, representing the Thoroughbred Owners of  
22 California, the Horsemen's Quarterhorse Racing Association, and  
23 Cal Western Appaloosa Association.

24 We would like to lend our very strong support for  
25 Mr. Nicholaw. He's been on the Board, I believe, for about five  
26 years. We feel he's done an excellent job and would like to see  
27 him returned.

28 CHAIRMAN LOCKYER: A motion on this matter?

1 SENATOR BEVERLY: Move we recommend confirmation.

2 CHAIRMAN LOCKYER: Senator Beverly moves confirmation.  
3 Call the roll.

4 SECRETARY WEBB: Senator Ayala.

5 SENATOR AYALA: Aye.

6 SECRETARY WEBB: Ayala Aye. Senator Lewis.

7 SENATOR LEWIS: Aye.

8 SECRETARY WEBB: Lewis Aye. Senator Petris.

9 SENATOR PETRIS: Aye.

10 SECRETARY WEBB: Petris Aye. Senator Beverly.

11 SENATOR BEVERLY: Aye.

12 SECRETARY WEBB: Senator Lockyer.

13 CHAIRMAN LOCKYER: Aye.

14 SECRETARY WEBB: Lockyer Aye. Five to zero.

15 MR. NICHOLAW: Thank you very much, Mr. Chairman and  
16 Members of the Committee.

17 CHAIRMAN LOCKYER: Now Mr. Scurfield. Good afternoon.

18 MR. SCURFIELD: Good afternoon.

19 CHAIRMAN LOCKYER: Did you want to start with any general  
20 description of the nature of your work or activities on the  
21 Board?

22 MR. SCURFIELD: Maybe only that I've been serving for five  
23 years now, and I also, as George has, have enjoyed it very much.

24 I think we're in challenging times in horse racing, not  
25 only in California, but internationally and within the United  
26 States. And so, we've done some things and got some things  
27 started, and I'd like to see them continued and would like to  
28 serve again.



1           CHAIRMAN LOCKYER: What's the nature of the Scurfield  
2 Company?

3           MR. SCURFIELD: Scurfield Company is a property management  
4 company that my children run.

5           CHAIRMAN LOCKYER: Oh, okay. You're the President, but  
6 they really do the work?

7           MR. SCURFIELD: It's kind of like I'm Chairman of the  
8 Horse Racing Board. It's titular, and I'm semi-retired. I do go  
9 in and check the bank account once in a while.

10          CHAIRMAN LOCKYER: Are there questions?

11          You help me understand, again, the drug testing, illegal  
12 medication policies.

13          Are your responsibilities different in any way when you're  
14 Chair rather than just a regular member, or is it --

15          MR. SCURFIELD: No, actually, you're Chair at the pleasure  
16 of your other commissioners. So, it's not something that is a  
17 special appointment, or anything like that.

18          CHAIRMAN LOCKYER: Does it take more time to do that?

19          MR. SCURFIELD: It only takes more time that you want to  
20 take, really.

21          But you mentioned medication, and I think this is also a  
22 very interesting time for medication issues because we have two  
23 real concerns. We have concerns for the people within our  
24 industry that we think are very, very fine people, and 99 and  
25 99/100s percent of them would not do anything to jeopardize their  
26 license or this industry.

27          But we also then have -- we have technology that's coming  
28 in this testing that's coming so fast that we have a fine line



1 now between enhancing, maybe an enhancing medication, versus a  
2 therapeutic medication that shows up at a later time, and being  
3 fair to our licensees.

4 And we have this development. Mr. Wood has presented our  
5 Board, and we adopted last year, an Integrity in Racing Program  
6 that gives a little more latitude to the stewards in really  
7 evaluating this technology versus fairness to our people. And I  
8 think it's working very well, and of course, we are the appellate  
9 body, so it serves us very well, too. Anything that goes to the  
10 stewards that licensees are not happy about comes to us.

11 CHAIRMAN LOCKYER: Other questions from Members?

12 If there's anyone present who wishes to comment, now would  
13 be the appropriate time.

14 MS. PAGE: My name is Carolyn Page. I sent some  
15 correspondence to Nancy Michel.

16 CHAIRMAN LOCKYER: We've all had a chance to read it.

17 MS. PAGE: Okay.

18 In addition to the information that you have received, I'd  
19 like to make a short statement.

20 CHAIRMAN LOCKYER: All right.

21 MS. PAGE: I am here to ask you to vote no on the  
22 confirmation of Ralph Scurfield. My request is based on the fact  
23 that under the leadership of Commissioner Scurfield, the CHRB has  
24 violated numerous civil rights in regard to the protection of  
25 women.

26 In May of 1995, I was sexually assaulted by a CHRB-  
27 licensed horse trainer on the premises of Hollywood Park Race  
28 Track. When I contacted Hollywood Park's security, I was

1 referred to a CHRB investigator.

2 I was encouraged by him to report the crimes the  
3 perpetrator had committed against me. He also promised to be  
4 involved in the CHRB investigation.

5 To date, it appears that no one in the CHRB has even  
6 spoken face-to-face with the perpetrator.

7 Throughout this process, I feel as though I have been re-  
8 assaulted by the CHRB's inactions and the insulting and demeaning  
9 remarks made to me by their investigators.

10 I have heard horror stories from other females who have  
11 filed complaints with the CHRB. I believe this routine type of  
12 behavior should stop.

13 I ask that you give someone who is better qualified the  
14 opportunity to turn this agency around.

15 CHAIRMAN LOCKYER: Mr. Scurfield, are you familiar with  
16 this?

17 MR. SCURFIELD: Yes, I am.

18 CHAIRMAN LOCKYER: Maybe you'll share with us whatever  
19 your --

20 MR. SCURFIELD: Yes, you know, we serve in an overseeing  
21 capacity, and regulations, and those type of things.

22 But I became aware of this not too long ago, through your  
23 letter, Ms. Page. And, of course, immediately went to the staff  
24 and said, "What is the situation?"

25 And we would have been -- all of the Commissioners,  
26 because I think that all of them heard from her, and we wanted to  
27 know, because this is our, you know, we're the ultimate  
28 responsibility.

1 And we were informed by the staff that this had been  
2 investigated by the various law enforcement agencies in the area,  
3 and that our people were monitoring that. And although we  
4 enforce regulations within the horse racing industry, that the  
5 outside law enforcement agencies, when they are concerned, we  
6 normally abide by whatever their outcomes are.

7 If their outcomes are one that a charge is filed, or  
8 something like that, then that licensee comes before us. But if  
9 there's no charge filed, and it's not a regulation matter, it's a  
10 penal matter, then we are not directly involved.

11 And I think that was conveyed.

12 CHAIRMAN LOCKYER: As I understand your point, the police  
13 department in Inglewood or the District Attorney's Office --

14 MR. SCURFIELD: I think both of those agencies have had  
15 some involvement in it, and worked with our people.

16 CHAIRMAN LOCKYER: Ms. Page, are you aware of them having  
17 looked into the matter?

18 MS. PAGE: Very limited, sir. I'll tell you about that  
19 when I have an opportunity to respond to the remarks he made.

20 CHAIRMAN LOCKYER: Please, now is appropriate.

21 MS. PAGE: First of all, not one Commissioner, not one,  
22 has contacted me. Nobody from the Commissioner's office has  
23 contacted me in response to my -- to my correspondence to that  
24 office. Not one.

25 I called on Mr. Nicholaw, and he called me back and said  
26 that Mr. Scurfield would be corresponding with me. That's the  
27 last I've heard.

28 CHAIRMAN LOCKYER: Didn't Mr. Wood correspond with you?



1 MS. PAGE: No, not a word from Mr. Wood.

2 CHAIRMAN LOCKYER: Is 4822 Shelby Place still the correct  
3 address?

4 MS. PAGE: Right.

5 CHAIRMAN LOCKYER: We have --

6 MS. PAGE: Mr. Wood has never sent me a letter. Or, if he  
7 sent me a letter, I do not remember it.

8 CHAIRMAN LOCKYER: Okay. We have a copy, a Xerox, of  
9 correspondence from June 5th from Mr. Wood.

10 MS. PAGE: June 5th?

11 CHAIRMAN LOCKYER: Yes.

12 MS. PAGE: Of last year?

13 CHAIRMAN LOCKYER: No, this year.

14 MS. PAGE: Well, I don't have it.

15 CHAIRMAN LOCKYER: Well, that's why you haven't seen it, I  
16 can tell.

17 Maybe I should give you a copy of your mail.

18 MS. PAGE: That would be wonderful.

19 CHAIRMAN LOCKYER: But it basically says what you've  
20 heard, that they rely on the District Attorney or Inglewood  
21 Police Department for purposes of penal --

22 MS. PAGE: And you want to hear the funny part about this?

23 The D.A. and the Inglewood P.D. also rely on the  
24 California Horse Racing Board, according to those agencies.

25 What I see is a conflict between these agencies who say  
26 one person's responsible; the other one says it. So, it's a  
27 bouncing ball.

28 CHAIRMAN LOCKYER: So you think they're --

1 MS. PAGE: Absolutely.

2 CHAIRMAN LOCKYER: -- just passing --

3 MS. PAGE: Inglewood P.D. did not even want to take a  
4 police report. I had to go to the District Attorney's Office to  
5 get a police report put on file.

6 CHAIRMAN LOCKYER: All right, thank you for your comment.

7 MS. PAGE: One other thing, sir.

8 Now, while he -- while the Commissioner is saying that he  
9 takes no actions until an investigation has been done by the  
10 police authorities, that was not the agreement with the CHRB  
11 investigator. I would never have reported the crimes to the  
12 police had I not had the encouragement and the promise of support  
13 if I reported it to the police.

14 CHAIRMAN LOCKYER: Well, I would think that the police  
15 report for a crime like this would be the appropriate thing.

16 MS. PAGE: Right, but I had no intentions of doing that  
17 because I feared for my life.

18 Not only did -- when I spoke to the investigator, I  
19 provided him with written documentation to report to him other  
20 incidents of violence that the perpetrator had committed against  
21 other people at the race track, and the horses, and nothing was  
22 done about that, either.

23 So, it wasn't just me. It wasn't just -- just a report  
24 that had to go to the police. It was a report that went to your  
25 agency, and no one ever called me back, and was insulted when I  
26 called them.

27 CHAIRMAN LOCKYER: Let me ask, I know you feel, as a  
28 general manager, that a specific incident is not exactly within

1 your purview unless it comes through the staff and the police  
2 department.

3 Is there any policy that the Board has developed or is  
4 implementing that relates to matters of police policing the  
5 facilities and premises, safety of patrons, and sexual  
6 harassment-type issues?

7 Those are sort of three different things.

8 MR. SCURFIELD: Yes. Let me do the best I can.

9 We, as Commissioners, are aware of the regulations of the  
10 Horse Racing Board, and we're aware of when our investigators are  
11 involved in those, and maybe they're -- normally, they'd come,  
12 then, before the stewards, and their license is in jeopardy, or a  
13 fine, or something like that.

14 There also -- we oversee anybody that's applying for a  
15 license that has been convicted of a crime of moral turpitude,  
16 which I think would certainly be involved here, because, as you  
17 can see, that's a prerequisite to our involvement in the  
18 licensing process.

19 CHAIRMAN LOCKYER: When there's been a conviction?

20 MR. SCURFIELD: When there has been a conviction.

21 Also, I think if we're just talking about harassment, or a  
22 gender situation, then our staff would look into that and report  
23 back to the Commission. And normally when these things come up,  
24 they respond to all the Commissioners, not just the one that had  
25 the question.

26 So, you know, I think we're handling it as best we can.  
27 And if there's way to improve, we'll do it.

28 CHAIRMAN LOCKYER: One of the things -- I don't know if



1 you have considered this or, perhaps, adopted -- that we found in  
2 the legislative setting that it's necessary to make sure that we  
3 annually train ourselves and our employees to be more sensitive  
4 about the changing attitudes in law with respect to sexual  
5 harassment.

6 Now, this is way past that in terms of the nature of the  
7 complaint.

8 But it just might be, in terms of the general employment  
9 atmosphere, worth a discussion to see if there's been things like  
10 that done to contemporize people and make sure that we do the  
11 best we can.

12 MR. SCURFIELD: Mr. Wood is here today, and he's, of  
13 course, heard your words. And I can assure you that he and I  
14 will have the same conversation.

15 CHAIRMAN LOCKYER: All right.

16 Thank you very much.

17 Any other questions from Members?

18 Yes, Mr. Blonien.

19 MR. BLONIEN: Mr. Chairman and Members, Rod Blonien in  
20 support of Mr. Scurfield's appointment.

21 Mr. Ed Friendly, the Chairman of the Thoroughbred Owners  
22 of California, wanted me to read part of a letter that he sent  
23 Senator Lockyer, and I'll just read two lines: "Over the past  
24 decade, I've participated in at least 100 CHRB and/or committee  
25 meetings. Ralph Scurfield, in my opinion, is by far the most  
26 effective CHRB Chairman the industry has had."

27 CHAIRMAN LOCKYER: I think that must be quite a  
28 compliment.



1 MR. SCURFIELD: I appreciate it.

2 MR. BLONIEN: I think he's too generous in his  
3 compliments.

4 CHAIRMAN LOCKYER: Well, you have some other friends,  
5 former Chairman.

6 What's the pleasure of the Committee?

7 SENATOR BEVERLY: Move we recommend confirmation.

8 CHAIRMAN LOCKYER: All right, call the roll, please.

9 SECRETARY WEBB: Senator Ayala.

10 SENATOR AYALA: Aye.

11 SECRETARY WEBB: Ayala Aye. Senator Lewis.

12 SENATOR LEWIS: Aye.

13 SECRETARY WEBB: Lewis Aye. Senator Petris.

14 SENATOR PETRIS: Aye.

15 SECRETARY WEBB: Petris Aye. Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Senator Lockyer.

18 CHAIRMAN LOCKYER: Aye.

19 SECRETARY WEBB: Lockyer Aye. Five to zero.

20 MR. SCURFIELD: Thank you very much.

21 [Thereupon this portion of the  
22 Senate Rules Committee hearing  
23 was terminated at approximately  
24 12:30 P.M.]

25  
26 --oo0oo--  
27  
28

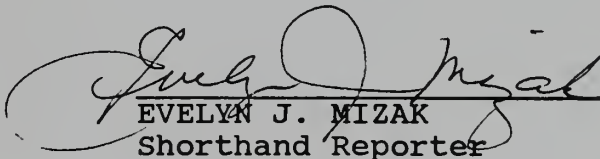
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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

K. WILLIAM CURTIS, Chief Counsel  
Personnel Administration Department

ELAINE E. LOKSHIN, Member  
State Board of Education

ELIN D. MILLER, Director of Conservation

SENATOR JIM COSTA

ERIK VINK  
American Farmland Trust

GLENDA HUMISTON, Vice President  
California Association of Resource Conservation Districts

DENISE DELMATIER  
The Gualco Group for Norcal Waste Systems, Inc.

ROBERT MEACHER, Chairman  
Board of Supervisors, Plumas County  
Regional Council of Rural Counties

LINDA BARR  
Sierra Club of California

SEBASTIANO STERPA, Member  
Board of Directors  
California Housing Finance Agency





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## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Our first appointee is Mr. Curtis.

MR. CURTIS: Good afternoon, Mr. Chairman.

My name is Bill Curtis. If I may, I'd like to give the Committee a short statement.

CHAIRMAN LOCKYER: Sure.

MR. CURTIS: Mr. Chairman, Senators, I'm pleased and honored to have been appointed by Governor Wilson as Chief Counsel of the Department of Personnel Administration, DPA.

In this position, I've been able to draw on some 18 years of experience in labor relations, beginning as a legislative intern for a statewide police organization, through some ten years at the bargaining table, negotiating collective bargaining agreements in the public sector arena, and dealing with the challenges of managing attorneys and support staff first as a law partner in a private practice, then both as Deputy Chief Counsel and Chief Counsel for DPA.

After completing my legal education, graduating from McGeorge School of Law with a Juris Doctorate degree, I was admitted to the California State Bar in 1980.

I came to state service in 1988 by way of appointment as legal advisor to the Public Employment Relations Board, PERB, to the Chairperson. This position allowed me to transition from eight years of representation of unions and individual employees to a neutral role. My experience at PERB also provided the opportunity to broaden my understanding of the state labor relations acts, such as the Educational Employment Relations

1 Act, EERA, the Higher Educational Employment Relations Act,  
2 HEERA, and the Ralph C. Dills Act, formerly known as SEERA.

3 In 1991, I was appointed as senior labor relations  
4 officer to DPA to negotiate collective bargaining agreements for  
5 some of the state bargaining units. Subsequently, in 1992, I  
6 accepted the position of Deputy Chief Counsel for DPA's Legal  
7 Division, where I remained until my predecessor left to assume  
8 another position.

9 During my tenure as Deputy Chief, I served as acting  
10 Chief Counsel when the Chief Counsel was out of the office for  
11 extended periods due to illness.

12 My litigation at DPA has been devoted mostly to cases  
13 arising out of the Dills Act collective bargaining problems in  
14 maintaining the Memoranda of Understanding, such as  
15 arbitrations, defense of ancillary actions arising from alleged  
16 unfair practices.

17 Much of my experience in private practice was involved  
18 in representing public safety unions and their members in  
19 personnel actions before various local civil service  
20 commissions, the State Personnel Board, and in labor relation  
21 matters before arbitrators, county boards of supervisors, the  
22 PERB, and state courts, and disability retirement appeals  
23 throughout at the state.

24 I believe these experiences have qualified me for the  
25 position of Chief Counsel at DPA.

26 Additionally, the number of years as an advocate for  
27 organized labor has given me valuable insight to facilitate  
28 reaching mutually acceptable settlements of disputes that

1 naturally flow from the give and take between the employer and  
2 the employees.

3 Finally, I'd like to thank the staff members of the  
4 Committee and individual Senators for their assistance in  
5 preparing for this hearing.

6 I'd be happy to answer any questions that you may have.

7 CHAIRMAN LOCKYER: Are there questions that Members  
8 want to start with?

9 I'm happy to begin, which would be to inquire about  
10 current negotiations with bargaining units. When might we  
11 expect to see some resolution of these matters?

12 MR. CURTIS: I don't know. I think it's going to  
13 depend a lot on the budget and what's in there for trading.

14 But when the parties reach a mutual agreement, and as  
15 you know, each individual unit has their own particular needs  
16 and desires, I think that we may be able to have collective  
17 bargaining agreements that are satisfactory to both sides. I  
18 would anticipate some time after the budget's passed, which has  
19 traditionally been what we've had.

20 CHAIRMAN LOCKYER: What are the rules? You have an MOU  
21 that's acted on by the Legislature, or approved or disapproved  
22 at some point.

23 MR. CURTIS: Pardon.

24 CHAIRMAN LOCKYER: What's the time frame for us to act  
25 on an MOU?

26 MR. CURTIS: I am not sure what the time frame to act  
27 on the MOU is after it's forwarded to the Legislature, but I  
28 believe it's 30 days.

1 CHAIRMAN LOCKYER: If we're not in session, does it  
2 just hold?

3 MR. CURTIS: Yes. There cannot be an MOU without  
4 MOU-enabling legislation.

5 CHAIRMAN LOCKYER: Well, I notice earlier this year,  
6 there was a communication from the Department to the various  
7 individual departments saying that somehow the Legislature's  
8 failure to provide funds for salary and benefit increases was  
9 cause of the delay in reaching agreement on contracts.

10 MR. CURTIS: I'm not aware of that memorandum or that  
11 communication. There are many causes for delays.

12 CHAIRMAN LOCKYER: It might start with the fact the  
13 Governor didn't put any in the budget. It's pretty hard for us  
14 to until the budget is enacted.

15 I'll show you the communication, because frankly, it's  
16 pretty offensive. If you're the fall guy, you're about to fall,  
17 if you had anything to do with it. I'll show it to you first.  
18 You can tell me where it came from. No, it's from Waddell.

19 MR. CURTIS: My predecessor.

20 CHAIRMAN LOCKYER: Yes. He copied you, which is how  
21 you get in the loop, apparently. This was your predecessor and  
22 it's not current.

23 MR. CURTIS: It's 1993.

24 CHAIRMAN LOCKYER: Your name is mentioned as one of the  
25 people he copied.

26 So, you ducked that bullet.

27 [Laughter.]

28 MR. CURTIS: Thank you.



1 CHAIRMAN LOCKYER: But I've got some more here.

2 Is there anything else you could tell us just about the  
3 general process of trying to resolve employee bargaining?

4 MR. CURTIS: With the bargaining, not really.

5 DPA has a head of labor relations, the chief  
6 negotiator, and basically he runs that.

7 I'm involved as counsel normally would be, to review  
8 any proposals that may have some legal significance.

9 But generally, bargaining normally, and particularly in  
10 good years, just follows the give and take of the bargaining  
11 table. And it's been my experience that when there is something  
12 to give, that we get the MOUs.

13 I've been on the side a lot longer asking for the  
14 giving rather than being able to be on the side that delivered  
15 it.

16 When I was bargaining in the last go-around, we did  
17 get extended contracts, the multi-year contracts. I think it  
18 was beneficial to everybody. Certainly, my experience in the  
19 numbers of arbitrations and the types of arbitrations, the kinds  
20 of disputes that arose out of that set of MOUs has indicated to  
21 me that it's a pretty good set of contracts.

22 CHAIRMAN LOCKYER: Is there still an effort to try to  
23 get a multi-year agreement? Is that still alive?

24 MR. CURTIS: I'm not sure what's on the table at this  
25 time, whether it's single-year or multi-year.

26 I'm sure of the 21 units, there are probably some  
27 unions that have multi-year proposals, and at this point in  
28 time, I'm not sure if the state has gone to such a proposal.

1 But it's well within contemplation of the parties in any given  
2 year to do that.

3 CHAIRMAN LOCKYER: Are there other questions from  
4 Members?

5 Let's talk about career execs. I guess there have been  
6 sort of two things happening. An effort to expand the number of  
7 positions in the career executive pool, and to shift decision  
8 making about those matters from the Personnel Board to the  
9 Department?

10 MR. CURTIS: The career executive appointment, or CEA  
11 process, which was begun in approximately 1963, it was put into  
12 law, the predecessor of Government Code 19889, laid that out.

13 I don't know, nothing has changed in those years.  
14 There was an earlier case that talked about the vesting of an  
15 individual's rights, and since that time, there have been no  
16 appellate challenges or otherwise to that process.

17 I am aware, just vaguely, that the Little Hoover  
18 Commission recommended, I think, putting all managers into the  
19 CEA process. DPA, as far as I know, reviewed that process and  
20 realized that all those managers did not rise to the level of  
21 the requirements for CEA, the high level policy and governmental  
22 decisions and advice decisions.

23 So, DPA has gone on with its review, as it's required  
24 to do by Government Code Section 19889, in the normal manner.  
25 Those recommendations are then approved, or reviewed, monitored,  
26 by the State Personnel Board. And I understand in the process,  
27 since this Little Hoover Commission's report, there have been  
28 some three or four hundred potential candidates identified as

1 having -- should have been CEA because of the types of jobs they  
2 do.

3 CHAIRMAN LOCKYER: How many?

4 MR. CURTIS: Three to four hundred, and at this point  
5 in time, latest report that I'm aware of, 170-some have gone to  
6 the State Personnel Board in the normal course, and I'm not sure  
7 how the Board's acted on those.

8 CHAIRMAN LOCKYER: Do you have any personal role in  
9 those decisions?

10 MR. CURTIS: No, that's the Classification and  
11 Compensation Division reviews those, as they're required to do  
12 from time to time, and make sure that the positions match the  
13 job they're doing.

14 CHAIRMAN LOCKYER: What would you say are the principle  
15 responsibilities then, that account for the bulk of your time  
16 being used at work?

17 MR. CURTIS: The bulk of my time, I've learned this the  
18 sad way, through experience, is dealing with the personnel  
19 problems of managing attorneys and support staff.

20 But other than that, I do advise the Director and the  
21 Governor through the Director, and members of the executive  
22 staff of DPA. And also, I offer advice either through my staff  
23 or through my personal contact with the agencies and departments  
24 throughout the state. The Legislature has called me on advice,  
25 for example, regarding the compensation for some staff members  
26 in the past. We naturally come to DPA, because they make those  
27 kinds of decisions.

28 That's the bulk of my responsibility.

1           CHAIRMAN LOCKYER: To what extent are you personally  
2 involved in collective bargaining, then? Is that minimal?

3           MR. CURTIS: In my role as Chief Counsel and as Deputy  
4 Chief Counsel prior to that, I had very little role in  
5 collective bargaining.

6           Occasionally, I'm asked to go the table to explain a  
7 concept, or address some concerns anyone may have on  
8 constitutionality of issues, and that sort of thing, and try to  
9 assuage any fears they have, that we're looking at it from  
10 basically at the same point of view that they are.

11           And we've been pretty successful at that. If you're  
12 aware, the Highway Patrol has adopted some disciplinary matters  
13 that seem to be very promising, and the proof will be in the  
14 pudding, but so far it looks pretty good.

15           CHAIRMAN LOCKYER: Other questions from Members.

16           Is there anyone present who wishes to make any  
17 comment?

18           All right, what's the pleasure of the Committee?

19           SENATOR BEVERLY: Move we recommend confirmation.

20           CHAIRMAN LOCKYER: We have that motion, call the roll.

21           SECRETARY WEBB: Senator Ayala.

22           SENATOR AYALA: Aye.

23           SECRETARY WEBB: Ayala Aye. Senator Lewis.

24           SENATOR LEWIS: Aye.

25           SECRETARY WEBB: Lewis Aye. Senator Petris.

26           SENATOR PETRIS: Aye.

27           SECRETARY WEBB: Petris Aye. Senator Beverly.

28           SENATOR BEVERLY: Aye.



1 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

2 CHAIRMAN LOCKYER: Aye.

3 SECRETARY WEBB: Lockyer Aye. Five to zero.

4 CHAIRMAN LOCKYER: Good luck, sir.

5 MR. CURTIS: Thank you very much.

6 CHAIRMAN LOCKYER: Okay, let's see, Elaine Lokshin, I  
7 guess, is our next one. Good afternoon.

8 MS. LOKSHIN: Good afternoon, Senators.

9 CHAIRMAN LOCKYER: How are you?

10 MS. LOKSHIN: Very well, thank you.

11 CHAIRMAN LOCKYER: You're still a high school student?

12 MS. LOKSHIN: No, not since Thursday.

13 CHAIRMAN LOCKYER: How long does your term continue  
14 until?

15 MS. LOKSHIN: Only one more month. I finish at the end  
16 of July.

17 CHAIRMAN LOCKYER: What did you learn doing this?

18 MS. LOKSHIN: I learned a lot. I think my speaking  
19 skills have improved in the past few months.

20 I've come to the conclusion for myself that I prefer to  
21 go into private business before I ever return to work for the  
22 government or any type of public office.

23 [Laughter.]

24 MS. LOKSHIN: I've had a wonderful time this year.

25 CHAIRMAN LOCKYER: Was it continuing as a junior  
26 purchase clerk that you had in mind?

27 MS. LOKSHIN: No.

28 CHAIRMAN LOCKYER: What was the most controversial

1 issue before the Board during the time that you were there?

2 MS. LOKSHIN: I think the Reading Advisory took up --  
3 had a lot of controversy tied to it, and a lot of meetings, and  
4 hearings, and so forth.

5 But I believe it was in May that the Board approved the  
6 Reading Advisory, which I think will really help improve the  
7 reading in California schools today. And has more of a direct  
8 focus on what the intentions of the Board is.

9 CHAIRMAN LOCKYER: Are there questions at all from  
10 Members?

11 Any member of the Board -- if you don't want to tell  
12 me publicly, you can tell me privately, anyone we shouldn't have  
13 confirmed?

14 MS. LOKSHIN: No, they've all been very kind to me, and  
15 they've been wonderful people.

16 CHAIRMAN LOCKYER: I wish I could take about half of  
17 them back.

18 Anyhow, all right, Senator Ayala.

19 SENATOR AYALA: She's from my neck of the woods, so  
20 I'll move confirmation.

21 MS. LOKSHIN: Thank you.

22 CHAIRMAN LOCKYER: The woods have been heard from.  
23 We have a motion, call the roll.

24 SECRETARY WEBB: Senator Ayala.

25 SENATOR AYALA: Aye.

26 SECRETARY WEBB: Ayala Aye. Senator Lewis.

27 SENATOR LEWIS: Aye.

28 SECRETARY WEBB: Lewis Aye. Senator Petris.

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Petris Aye. Senator Beverly.

3 SENATOR BEVERLY: Aye.

4 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

5 CHAIRMAN LOCKYER: Aye.

6 SECRETARY WEBB: Lockyer Aye. Five to zero.

7 CHAIRMAN LOCKYER: I should have had asked you what  
8 you're going to do next year?

9 MS. LOKSHIN: I'm going to Rice University. I plan to  
10 major in economics.

11 CHAIRMAN LOCKYER: Good luck.

12 MS. LOKSHIN: Thank you very much.

13 CHAIRMAN LOCKYER: Ms. Miller is next. Good afternoon.

14 MS. MILLER: Good afternoon.

15 I've just been informed that Senator Costa is on his  
16 way. He was going to introduce me, so if it's all right with  
17 you, Mr. Chairman, when he gets here, I'll --

18 CHAIRMAN LOCKYER: We'll interrupt you, sure.

19 MS. MILLER: Thank you.

20 I'm truly honored to have the opportunity to be here  
21 today as the Governor's appointee to the Department of  
22 Conservation.

23 I also want to take this opportunity to thank Nancy  
24 Michel for her assistance in guiding me through this process.  
25 It's the first time going through the appointment process.

26 I bring to this position experience in public policy  
27 development, regulatory and legislative oversight and affairs.

28 CHAIRMAN LOCKYER: Do you want to be interrupted right

1 now?

2 MS. MILLER: Great, wonderful.

3 CHAIRMAN LOCKYER: Senator Costa.

4 SENATOR COSTA: Thank you very much, Mr. Chairman,  
5 Members of the Rules Committee. I'll be very brief.

6 I don't want to cause the interruption of the comments  
7 that Elin was making, but I just wanted to share with Members of  
8 the Committee that I have worked with this individual for a  
9 number of years in many of her past professions, different hats  
10 that she's worn, both in the Department of Pesticide Regulation,  
11 where we dealt with the strategic plan that has allowed the  
12 Department to bring in outside constituencies to serve with the  
13 Department's operations and to provide input. Also, to work  
14 with the regulatory focus with the local ag. commissioners'  
15 offices.

16 I think the experience in the past, both when she has  
17 worked in other segments within the state government, as well as  
18 in the private sector, that she has been able to work with  
19 Members on both sides of the aisle.

20 I think she's proactive in her approach toward problem  
21 solving, and I think she wants to try to make -- she comes to  
22 government with the notion that we ought to make it work and  
23 make it user-friendly.

24 And we've not always agreed on every single issue.

25 CHAIRMAN LOCKYER: Do you remember one you disagreed  
26 about?

27 SENATOR COSTA: Yes.

28 But even on those issues of disagreement, we have been



1 able agree to disagree and continue and to work, so I think  
2 that's an important part.

3 CHAIRMAN LOCKYER: Thank you, Senator.

4 SENATOR COSTA: Thank you.

5 CHAIRMAN LOCKYER: We had just begun. If you want to  
6 start again, that's okay.

7 MS. MILLER: I guess perhaps more important than some  
8 of the experiences that I bring to this position, that I bring  
9 an intense desire do make government work better for the people  
10 of California.

11 In the three years since I joined state service, I  
12 found the public sector both rewarding as well as challenging.  
13 While in the private sector, I must admit to greatly  
14 underestimating the talent and commitment of those individuals  
15 who work in state service.

16 I've learned that government certainly has its  
17 challenges, and that how we can really deal and meet those  
18 challenges is with our collective and continuous commitment to  
19 improvement.

20 In 1993, I joined as Chief Deputy Director of the  
21 Department of Pesticide Regulation. There I administered the  
22 day-to-day operations of a \$45 million budget, and approximately  
23 400 employees. To that job, I took 16 years of experience in  
24 the private sector -- I did it backwards, private sector before  
25 coming here -- 16 years of experience there, where I worked for  
26 large corporations as well as small family-run businesses. I  
27 also had the opportunity to manage a trade association.

28 Aside from the hands-on business and management

1 knowledge I gained through those experiences, I also learned to  
2 work with a very diverse group of people. This will serve me  
3 well in handling the concerns of the extreme and varied  
4 constituencies we interact with at the Department of  
5 Conservation.

6 I contribute much of my concensus building expertise to  
7 the periods I've had an opportunity to serve on various boards  
8 and commissions. I was appointed to the U.S. Department of  
9 Agriculture negotiating team on the 1995 farm bill, in looking  
10 at the conservation provisions of the farm bill. I'm pleased to  
11 say that a lot of that which came out of our dialogue group  
12 ended up making it into the 1996 farm bill.

13 I also recently co-chaired two committees, one  
14 committee with the U.S. Environmental Protection Agency to look  
15 at international harmonization of pesticide regulation policies,  
16 and also another committee I co-chaired with the County  
17 Agricultural Commissioners to look at redirecting our  
18 enforcement activities to areas of more public health concern,  
19 as well as more areas of environmental concerns.

20 For the past seven months, I've served as the Director  
21 of the Department of Conservation. The Department oversees a  
22 variety of programs that deal with California's environment,  
23 economy, and public safety.

24 The Division of Mines and Geology is within the  
25 Department of Conservation, and in that area we deal with  
26 geological mapping and seismic hazards and our earthquake  
27 programs.

28 The Department's also responsible for the Surface

1 Mining and Reclamation Act, known as SMARA. The law is directly  
2 implemented by local lead agencies. Those are either counties  
3 or cities. But in 1990, there were extensive changes to the law  
4 that basically had the serve as a backstop for enforcement for  
5 those programs, as well as requiring reporting, which I'll be  
6 going into later.

7 We also have the Division of Recycling, which is  
8 responsible for the Beverage Container Recycling and Litter  
9 Reduction Act, which is also a very extensive program with many  
10 varied constituents.

11 Our Division of Oil, Gas and Geothermal Resources is  
12 responsible for regulating safe drilling as well as abandonment  
13 of oil, gas, and geothermal wells in the state.

14 And finally, we implement California's major  
15 agricultural land conservation. These include: the Williamson  
16 Act, which was passed back in '65, which provides a tax  
17 differential to keep land and open space in agricultural  
18 production; the Ag. Land Stewardship Program that Senator Costa  
19 authored this last year that provides long-term easements for  
20 farm land protection, as well as for the farm land mapping and  
21 monitoring program.

22 I accepted this appointment because I feel that I have  
23 in the past dealt with very complex and diverse issues. And as  
24 I said previously, I have a strong commitment to making  
25 government work better.

26 I believe a person should feel passion about the issues  
27 they represent, and I do so about conservation, and I can gladly  
28 say that I really do like my job.



1 I've been blessed with a variety of experiences in my  
2 career. With this has come challenging and controversial  
3 issues. I deal with these issues in a way that I only found  
4 that works best, that's direct, honest and up-front  
5 communication with all entities involved, including local  
6 government, the environmental community, industry, as well as  
7 the Legislature.

8 In closing, I want to confirm my deep commitment to  
9 implementing the Department's programs effectively and  
10 efficiently, and working with you here in the Legislature to do  
11 so. I look forward to our mutual success.

12 I realize that Senator Sher offered some questions on  
13 Friday, I believe. And I would be happy to answer those  
14 questions or any others. In particular, he had some issues on  
15 the recycling program, and also on our Surface Mining and  
16 Reclamation Act, which in part I do agree with some of the  
17 things Senator Sher raised with SMARA, and I'd be happy to  
18 elaborate on how I'd like to deal with those issues.

19 CHAIRMAN LOCKYER: Why don't you start with surface  
20 mining?

21 MS. MILLER: Do you want me --

22 CHAIRMAN LOCKYER: Well, I can tell you what he asked,  
23 if you want.

24 MS. MILLER: I can go through.

25 I think one of the points that the Senator raised in  
26 his background documents, and I think it would help if maybe I  
27 put into context the law, and what was in place at different  
28 times in the law.



1           Several issues were raised by the comments, and I want  
2 to address those various issues.

3           The original Surface Mining and Reclamation Act was  
4 passed back in '76, but a very dramatic change was made in the  
5 law that was effective January 1, 1991, and for the first time  
6 there was an aggressive approach at dealing with approved  
7 reclamation plans, for the first time financial assurances had  
8 to be in place. Also, that timeframe established that miners  
9 had to report to us and keep reports coming in as to the status  
10 of the mines, so the Department of Conservation was responsible  
11 for that. And we would also be assisting leads agencies in  
12 implementation of the act.

13           At the time of the passage of these changes, and it was  
14 AB 3551 that at the time Assemblyman Sher put into place, the  
15 Department moved forward on an enforcement priority, and I think  
16 it made sense at the time. The first priority was to get mines  
17 reporting. The second priority was to be able to deal with  
18 making sure reclamation plans were drawn up. And then the third  
19 priority was financial assurances.

20           You have to have a reclamation plan in place before you  
21 can then estimate what the financial assurance needs to be. And  
22 so, that was the order of priority that they looked at.

23           The information that had been provided to the Senate  
24 Natural Resources Committee, in fact, it was request, I believe,  
25 that came in about the 24th or 25th of May this year, and we  
26 sent a letter on the 28th of May. In that request, asked us to  
27 list the mines without financial assurances, as well as the  
28 mines without interim management plans.

1           So, the number of 600 mines out of compliance came from  
2 those lists. It may have been communication, lack of  
3 communication, between the Senate staff and our staff, but just  
4 by asking for a list of which mines that don't have financial  
5 assurances doesn't mean those mines are not in compliance.

6           Under the law, financial assurance is required when a  
7 miner starts actually operating the mine. So, they may be in  
8 the process of getting their reclamation plan in place, but  
9 haven't really started excavation, and it's not required until  
10 you actually start excavation.

11           So, for example, on that list of 600, Senator Lockyer,  
12 within your district, Mission Valley Rock and Apperson Ridge are  
13 two mines that fall into that category. They haven't actually  
14 started excavation, so they're not out of compliance. It's  
15 true, they don't have a financial assurance, but they actually  
16 are in compliance with the act.

17           Also on that list, we have two different lists that  
18 were asked for, and we provided those lists. There's actually  
19 about 71 duplicates. So, just for background, that's why I  
20 wanted to deal with that for 600 out of compliance.

21           However, we do have quite a few mines out of  
22 compliance, and I wanted to make sure that we're all on the same  
23 page.

24           CHAIRMAN LOCKYER: How many is it that are excusably  
25 out of compliance because they're not excavating?

26           MS. MILLER: What we need to do for that, we wanted to  
27 look at some of those mines just to check, and so we hadn't had  
28 a chance to go through and check all of those.

1           What happens is, it's the lead agency, it's either the  
2 local county or city, that's responsible for keeping track of  
3 has the excavation started, et cetera.

4           That gets reported to us on an annual basis, so it's  
5 also a matter of timing that the reports come in. So, in order  
6 to accurately say, should we be going after, for example, these  
7 mines, we would then have to go back specifically to the lead  
8 agency and find out what the status is of that mine in  
9 particular.

10           In fact, that's one thing I'll go into. I have asked  
11 our staff, particularly with those lists, to bring to me their  
12 recommendations on enforcement for that.

13           But, just so we know where we are in compliance, since  
14 the AB 3551 went into effect, there's been a 54 percent increase  
15 in the amount of mines reporting. That's still not as high as  
16 I'd like it to be, but at least there has been an increase.

17           CHAIRMAN LOCKYER: You mean it was zero before?

18           MS. MILLER: Reporting had not been required, right,  
19 for the Department.

20           CHAIRMAN LOCKYER: So, 54 percent doesn't mean  
21 anything if you started with nothing. If they had no obligation  
22 to report --

23           MS. MILLER: They had no obligation to report, yes, and  
24 so that's what I said. We're not -- I just wanted to show that  
25 some things have occurred.

26           On reclamation plans, it was at 61 percent, because  
27 reclamation plans have been required for a while. When this  
28 went into effect in 1991, there was 61 percent in compliance.



1 We're at 82.5 percent in compliance in 1996.

2 Financial assurances, which the first time they were  
3 required was starting in '93, was the first year that we have,  
4 18 percent were in compliance that first year, and we're up to  
5 69 percent, but still not good enough as far as I'm concerned.

6 But I just -- because the numbers were different with  
7 the 600, I just wanted to show you where we were with the  
8 different categories of compliance.

9 CHAIRMAN LOCKYER: What do you think the right number  
10 is that are operating illegally or abandoned?

11 MS. MILLER: As far as the total number, well, under  
12 SMARA itself is a different number than if you look at abandoned  
13 mines in the state, and the estimate that our State Geologist  
14 has made, there's as many at 40,000 mines. But anything prior  
15 to 1976 is not under the jurisdiction of SMARA, but there are  
16 many abandoned mines out there, and it's how do we deal with  
17 those abandoned mines.

18 CHAIRMAN LOCKYER: Mines that were active in '76?

19 MS. MILLER: Anything that was in '76 active, came  
20 under the jurisdiction of SMARA.

21 CHAIRMAN LOCKYER: That's the 1400, basically?

22 MS. MILLER: There's 1400 mines active in the state  
23 today, but 40,000 that I mentioned earlier, when we're looking  
24 at the total amount of abandoned mines potentially in the state,  
25 historically.

26 CHAIRMAN LOCKYER: Now, when you say 1400 are active,  
27 that means they've filed, or something. They may not be  
28 excavating?



1 MS. MILLER: Right, they're on the books, within our  
2 reports and on the books.

3 CHAIRMAN LOCKYER: Of those 1400, your report says  
4 there's 146 that are abandoned?

5 MS. MILLER: Well, yeah, when we take a look at what he  
6 added up, and he looked -- I think it was 484 or 486 that  
7 were -- that he looked at, plus the 146, I think is how he got  
8 to the 600. If we just subtract the duplicates of 71, from 600  
9 subtract 71 -- I didn't do this in my head -- but from 600,  
10 subtract the 71, plus we only checked on a few as far as, was  
11 there in place at the time active excavation, so it's still  
12 going to be our estimate is 69 percent of 1400 are mines that  
13 are in compliance, the remainder of which, 31 percent are out of  
14 compliance with financial assurances.

15 So, I think the key here is next steps. This is the  
16 historical where we are, and I think the key is where we need to  
17 be in the future.

18 One of the other things mentioned is, we hadn't had any  
19 enforcement of SMARA, and this might have meant no enforcement  
20 specifically based upon financial assurances, because we have  
21 taken 109 enforcement actions under SMARA, and about 10 we have  
22 taken to the Attorney General for prosecution under SMARA.

23 But if you asked us specifically, have you taken any  
24 enforcement actions solely based upon financial assurances, the  
25 answer is no. And that's one thing that came to my attention  
26 with this inquiry, that we're changing our policy on that.

27 I think when a law came into place in 1993, and for the  
28 first two years, trying to get mines into compliance was the

1 key, now it's time that we start taking action on those mines  
2 that are out of compliance and that are willfully out of  
3 compliance.

4 CHAIRMAN LOCKYER: What kind of action?

5 MS. MILLER: Well, the -- steps, when we saw the list,  
6 and I saw the concern, I've asked the staff to put together an  
7 enforcement policy. So, would we be going after mines first  
8 that had no reclamation plans, had no financial assurances, had  
9 not in any way tried to comply with the act, and going after  
10 those first? Which, we've already started that process, but  
11 focusing on those mines first, and then going through.

12 The next step would be to take a look at those mines  
13 that have not been cooperating with the lead agencies and  
14 obtaining financial assurances, and go from there.

15 One other issue as it relates to financial assurances,  
16 I think that's noteworthy that when you go through the list that  
17 had been sent to Senator Hayden, there's quite a few small mines  
18 listed.

19 The issue with some of these small mines was, they  
20 don't have the financial wherewithal to secure a financial  
21 assurance. But there's other mechanisms that were established  
22 under the act, and one mechanism was to have the State Mining  
23 and Geology Board look at bonds pooling, to try to see if that  
24 would be an alternative method to get financial -- get these  
25 mines in compliance.

26 So, I've asked the State Mining and Geology Board to  
27 gear up. They've already had a few meetings with different  
28 financial institutions to come up with some recommendations.

1 I've already also promised Senator Sher that by this fall, I'd  
2 have recommendations to him on dealing with this financial  
3 assurance issue.

4 CHAIRMAN LOCKYER: It's like a bond basically?

5 MS. MILLER: It'd be a bond. There would be an  
6 industry pool of dollars, and it's just being able to set up the  
7 mechanism.

8 There may need to be legislative changes to do that.  
9 We're exploring that: what's in the law that's allowable now,  
10 versus what do we need to come back to the Legislature for, for  
11 changes.

12 The other issue is dealing on SMARA with lead agencies,  
13 and that sometimes being the cities or counties, and we're  
14 refocusing some attention. We had an effectiveness study come  
15 out in December. In that study, it recommended that we spend  
16 more time with lead agencies. So, I've asked staff to try to  
17 meet with each of the lead agencies each year, if we can, as  
18 resources permit.

19 We're coming up with a quarterly newsletter directed  
20 towards them so we can talk about compliance with SMARA, how  
21 different lead agencies are dealing with different things, and  
22 focusing basically on lead agency assistance, and helping them  
23 get people in compliance with SMARA as well.

24 I think that's about all the questions he had in there,  
25 unless I've missed something.

26 CHAIRMAN LOCKYER: To make sure I understand, of the  
27 146 or so that seemed to perhaps have been abandoned, do we know  
28 how many of those sites taxpayers will be responsible for



1 cleaning up?

2 MS. MILLER: The difficulty is, I think on that list,  
3 he asked for how many mines do not have interim management plans  
4 in place. Once again, it's a snapshot of who didn't have a  
5 plan.

6 I guess the question is, what are these plans. If  
7 someone actually goes below less than ten percent annual  
8 production, then they need to file an interim management plan.  
9 And sometimes what that means is, just so that they have secured  
10 the site to be able to deal with -- if anybody comes on to the  
11 site, from a safety standpoint, et cetera. And that would be  
12 what would be included in the interim management plan.

13 And the fact that our report didn't reflect we had the  
14 plan doesn't necessarily reflect that the mine actually has been  
15 abandoned. We then have to go back and explore, case by case,  
16 what's the situation on this; is it the timing, that they filed  
17 it already with the lead agency but not with us yet. Those  
18 kinds of things that we'd have to focus on before we can come up  
19 with an actual number.

20 But I guess my commitment here is, and why I shared the  
21 percentage figures, when we have 69 percent compliance with  
22 financial assurance, and I'm saying that that's not good enough,  
23 that I want to commit to increasing that compliance rate over  
24 time, and that's what I'll be asking staff to do, to come up  
25 with how do we get that compliance rate up very quickly over a  
26 period of time.

27 CHAIRMAN LOCKYER: I guess the principle issue from  
28 Legislators who've asked is, is there some financial exposure to



1 remediation that the state needs to worry about? I don't think  
2 you have an answer for that.

3 MS. MILLER: No, I don't have a specific answer for  
4 that.

5 Certainly, if there are mines out there that have been  
6 completely abandoned, the operator's nowhere to be found,  
7 certainly there is, but no, I don't have an estimation of that.

8 CHAIRMAN LOCKYER: Maybe in some subsequent  
9 discussion, you can help us with that?

10 MS. MILLER: Yes.

11 CHAIRMAN LOCKYER: Other questions on mining? Yes.

12 SENATOR LEWIS: In the case where you have a mine  
13 that's out of compliance, for whatever reason, refuses to become  
14 compliant, what do you do? How do you shut them down? What's  
15 your course of action?

16 MS. MILLER: The course of action on shutting down a  
17 mine is a pretty extensive process. It takes about six months  
18 and different actions we go through, and then there's appeals,  
19 et cetera.

20 But let's say it's in the case of a mine that doesn't  
21 have a financial assurance, it's a small mine. So what we do  
22 is, we take the action to shut them down. The mine is shut  
23 down.

24 Well, if they don't have a financial assurance, then  
25 the question is, how do we pay for remediation? So then in  
26 turn, we'd sue the mine to help pay for remediation, but if they  
27 didn't have the financial wherewithal in the first place, then  
28 we'd end up with an operator -- without an operator, without the

1 money to clean up, and then that becomes the liability of the  
2 state.

3 So, I think all along, a question has been,  
4 specifically with these smaller mines, to keep them producing,  
5 at the same time look at other mechanisms maybe other than  
6 shutting them down to get on the ground compliance with the act  
7 as being the highest priority for dealing with the issue.

8 SENATOR PETRIS: Have you considered requiring them to  
9 post a bond? If some company comes along and says, "I want to  
10 open this mine," and in view of the track record here, there's  
11 146, a very large number that just aren't doing anything, and  
12 apparently don't even have the resources to pay a fine. I don't  
13 know. They haven't been fined very much.

14 What about having some kind of security requirement up  
15 front for the state?

16 MS. MILLER: That's actually -- the financial  
17 assurances is, in a way, the security requirement not only for  
18 the local lead agency, but it's also with the State of  
19 California. And that's the whole purpose, that that financial  
20 assurance in place in the right amount to be able to cover for  
21 the reclamation.

22 So, the law requires that now. That's where we're at  
23 69 percent compliance rates. So we've got 31 percent out of  
24 compliance with that financial assurance to make sure that that  
25 reclamation can be paid for.

26 SENATOR PETRIS: What form do those assurances take?  
27 Do you just check their financial statement?

28 MS. MILLER: No, actually it's pretty extensive. In

1 fact, some have argued too extensive, and some financial  
2 institutions have input to us that it's very, very difficult for  
3 many people to be able to secure them.

4 But to be able to actually have a bank sign on, to say  
5 that this amount of money is available, let's say, if the  
6 individual went forward and went broke, or had a decrease in  
7 production, or whatever, and those are actually updated yearly,  
8 because certainly the financial status of the company could  
9 change yearly, as well as amount of excavation that has taken  
10 place, so, the amount that would need ultimately need to be  
11 reclaimed.

12 So, that -- financial assurances are actually updated  
13 yearly with the local lead agency and then reported to the.

14 SENATOR PETRIS: What kind of mines are we talking  
15 about? Gold? Coal.

16 MS. MILLER: Actually, there is no coal mines. I think  
17 I'm correct saying no coal mines in the State of California.

18 The majority of the mines are actually gravel mines,  
19 aggregate mines, so sand and gravel mines are majority in  
20 numbers of mines in the State of California.

21 SENATOR PETRIS: Are they actually mines the way we  
22 think of a mine, or are they open quarries?

23 MS. MILLER: Well, if you're thinking of a mine that's  
24 a small hole into the side of a mountain, no, most of them are  
25 open. And under the act, that's what we're dealing with for the  
26 most part, is mines that do have challenges as far as dealing  
27 with need for reclamation afterwards.

28 That's why we take so seriously the development of



1 those reclamation plans up front to how that mine will be  
2 reclaimed once mining has ceased.

3 SENATOR PETRIS: I may not have caught your answer, but  
4 one of the complaints seems to be that the Department hasn't  
5 really been enforcing that part of the law to make them do what  
6 they're supposed to do. I didn't catch your answer. You  
7 probably answered it.

8 MS. MILLER: We have been taking enforcement action.  
9 But specifically, if they're in compliance with everything else,  
10 but not financial assurances, in the past we have not.

11 That's actually through this inquiry that Senator  
12 Hayden made that came to my attention. I'm changing that  
13 policy, that we will move forward also on financial assurances.

14 Since the requirement's been in place really since '93,  
15 I think it made sense at the time to prioritize, in looking at  
16 our reports, our reclamation plans done. But I think the next  
17 step is to look at financial assurances.

18 SENATOR PETRIS: You have quite a large number,  
19 apparently, that are operating without it.

20 MS. MILLER: Well, like I said, some of these that are  
21 listed that are operating, that are operating without --  
22 actually, by law, can, because you don't need a financial  
23 assurance until you actually start excavation. So, that was one  
24 of the problems.

25 When we were asked for list of who do not have  
26 financial assurances, it wasn't asking for which mines are out  
27 of compliance with financial assurances. And that's actually my  
28 -- since this was developed, my staff's been working on that, to



1 go back to the lead agencies, find out what the status of the  
2 mine is, et cetera.

3 SENATOR PETRIS: Are most of these, did you say, sand  
4 and gravel?

5 MS. MILLER: Mainly sand and gravel.

6 SENATOR PETRIS: Isn't there a tremendous demand still  
7 in California for sand and gravel?

8 MS. MILLER: Yes, there is. In fact, that's another  
9 thing that SMARA does. We are required by the law to look at  
10 classification of mineral deposits in the state. Then that  
11 information is input to local government to then utilize in  
12 their decision making process.

13 CHAIRMAN LOCKYER: Anything else on mines while we're  
14 on that topic.

15 I guess staff knows that some of the mines out of  
16 compliance are very large, not just small ones. I guess your  
17 answer is the same in the phase --

18 MS. MILLER: We need to focus on those, exactly.

19 CHAIRMAN LOCKYER: The next issue, I guess, that would  
20 be worthy of discussion, let me lay the foundation, however, in  
21 this way. It has to do with the RFP on a study of recycling  
22 programs.

23 One of the reasons the predecessor before you, that is,  
24 Mr. Heidig, didn't receive confirmation by this Committee is  
25 that he had a habit of doing these little RFPs with his buddies,  
26 and some of the same topics. Although, the one that was  
27 controversial at the time studied the oil industry regulations  
28 to see if they could be eliminated, and various kinds of efforts

1 to get around the requirements about bidding, and so on, were  
2 done.

3 First, sort of two questions have been raised, two or  
4 three, with respect to this RFP. First, you might tell us,  
5 where are we in the process? Is it wrapped, or what's  
6 happening?

7 MS. MILLER: The process is, the RFP went out in  
8 February, and came back, and then proposals came back on March  
9 15, I believe the date was.

10 We did select consultants to do this study, and we're  
11 in the beginning stages of formulating the scope of the study.  
12 And maybe, if we can go back through and discuss, you know, why  
13 we're proceeding, and those sorts of things.

14 I came into this program very new to recycling, with no  
15 bias one way or another. For those of you that have worked the  
16 recycling issue before, and you take a look at the lobbying list  
17 who deals with recycling, and as you might well imagine, within  
18 a very short time that I was in this program, I was -- these  
19 various individuals had an opportunity to chat with me. And it  
20 really showed me the diversity of this program that I had not  
21 realized was quite as diverse as it was.

22 1178 last year to me was a resounding wake-up call for  
23 the Department of Conservation. When you have the Legislature  
24 mandating aggressive budget cuts to a program, and then you have  
25 the administration basically blessing those and saying, you  
26 really need to look at this program thoroughly, it was a signal  
27 to me that that's exactly what I needed to do.

28 So, I decided to proceed with the study in January of

1 this year, to do a top-to-bottom review of the program, with  
2 everything on the table. And I'll reinforce no preconceived  
3 notions, to take a look at this program, and then have those  
4 consultants come back with some recommendations that then I  
5 could then utilize, with maybe some options of what the program  
6 may or may not look like in the future.

7 It may very well validate much of what we have in place  
8 in California today. On the other hand, it might come up with  
9 some different ideas that then I can take to the Governor, and,  
10 I hope, ultimately to the Legislature to have you review for  
11 changes.

12 So, that's -- that was the initial emphasis of the  
13 start of the process in dealing with this recycling study.

14 CHAIRMAN LOCKYER: Did anyone inform you at the time  
15 that the issue of this study was specifically raised during the  
16 discussion of Senate Bill 1178 and rejected?

17 MS. MILLER: Well, in January, no, no one had. Since  
18 that time, especially, I had tried to see Senator Sher, and he  
19 had been extremely busy, obviously, this spring, and I got in to  
20 see him in April and May.

21 When I had a chance, he raised the issue that it had  
22 been controversial.

23 What I had heard was that there had been, from various  
24 players, that a study had been raised, but the issue had been  
25 should it be at Trade and Commerce Agency, or instead, should it  
26 be at the Department of Conservation. So, that was an issue I  
27 had heard.

28 The other issue I heard, that there was a technical



1 advisory committee that had been discussed to be part of this  
2 study, and that was very bureaucratic.

3 Then the other issue I heard was the fact that the  
4 Department already had statutory authority to do the study, so  
5 that's why the administration had withdrawn the language. I  
6 think it went in on September 15th -- September 5th and came out  
7 September 12th.

8 So, after the fact, yes, I have. I have found that  
9 there was discussion.

10 But I reviewed what occurred during the Natural  
11 Resources Committee, and there hadn't been much discussion  
12 because the language of the study had yet to be developed. And  
13 that would go in -- actually, I think when it went to  
14 Appropriations is what had been discussed. So, there wasn't  
15 much help for me when I reviewed this a couple weeks ago to look  
16 at what was really discussed in the hearing.

17 My understanding from staff is, they had not been  
18 involved at all on any of the discussions regarding the study  
19 contents. So, they were not knowledgeable about that.

20 CHAIRMAN LOCKYER: How many consultants are there are,  
21 or how many groups work for you on it?

22 MS. MILLER: What we were looking at, the RFP went out,  
23 and actually, that was another issue. And I take full  
24 responsibility for this, that the -- I didn't want the  
25 Department of Conservation to come up with the scope of the  
26 study. So I asked the RFP to be written very broadly, and it  
27 was. I think that breadth elicited quite a few phone calls I  
28 received after the RFP went out, and rightfully so.



1           So with that, we changed the actual contract with the  
2 contractors. The issue had been, we talked about review of  
3 waste programs. We didn't have any intent going out to review  
4 waste programs, but we wanted to look, instead of looking at the  
5 2020 program in a vacuum, we wanted to look at how it would  
6 complement other programs, like the 939 program. How it would  
7 fit in, and how it would, if we made changes to it, how it would  
8 affect.

9           So, that's basically where we are on the contract.  
10 Really, how would it affect the AB 939 program.

11           CHAIRMAN LOCKYER: So, this is not necessarily a  
12 re-evaluation of 939?

13           MS. MILLER: No, absolutely not.

14           CHAIRMAN LOCKYER: But for these ripple effects.

15           MS. MILLER: Right, right.

16           CHAIRMAN LOCKYER: How many consultants have we wound  
17 up with?

18           MS. MILLER: We have three consultants. They were the  
19 winning RFP, and that has been an issue that was raised.

20           CHAIRMAN LOCKYER: Are they together?

21           MS. MILLER: They are together. There's a central  
22 consultant, and that is Jim Gibson. He knows our program inside  
23 and out. And I think from -- as complicated as the statute is,  
24 and this program is, he certainly has a lot of vast knowledge of  
25 the intricacies of this program.

26           We also have Bill Shireman, and Bill Shireman was the  
27 original, I guess you could call him the father of the Beverage  
28 Container Recycling and Litter Reduction Act back in '86. He

1 had been with Californians Against Waste, so I thought he would  
2 provide a really good perspective of one of the leaders that got  
3 this program going in the first place.

4 And then the person who has been somewhat controversial  
5 that Senator Sher had raised is Lynn Scarlett. And she's the  
6 vice president of the Reason Foundation.

7 CHAIRMAN LOCKYER: Do they collaborate? Do the three  
8 of them submit one proposal? Is that how it works?

9 MS. MILLER: The three of them will be working  
10 together. I really don't have any preconceived notions about  
11 the outcome.

12 If there was a way that, through the process, and we're  
13 scoping the study, and before we finalize on what that scope is,  
14 and in light of Senator Sher's issues and concerns, we're going  
15 to float that scope out to get people's reaction to it. And  
16 then, we're basically turning the three consultants loose.

17 And they're really responsible for gathering all the  
18 stakeholders, and being able to interview them, getting their  
19 ideas, their perspectives, and then coming back with  
20 recommendations this fall.

21 CHAIRMAN LOCKYER: I guess what I don't understand  
22 about not what they'll do, but how they got to where they are  
23 now is, were each of the three hired independently, or did  
24 they --

25 MS. MILLER: No, they came in with a bid on the RFP.  
26 They came in as a package, exactly, as a package.

27 CHAIRMAN LOCKYER: I share Senator Sher's view that it  
28 is hard to expect unbiased commentary and analysis from Reason

1 Foundation. They start with a point of view that's, perhaps,  
2 legitimate and needed, but it would be like hiring the ACLU to  
3 comment on First Amendment issues. I know what they're going to  
4 say before they comment --

5 MS. MILLER: Well, actually, one of the things in  
6 looking at Lynn Scarlett that I found noteworthy, in fact, it's  
7 a quote from Jerry Powell -- who's publisher of the Resource  
8 Recycling Magazine, which is the number one recycling magazine  
9 in the state, and he's been an advocate of recycling for 20  
10 years -- how he positions Lynn as, she's among group of diligent  
11 researchers whose writings force recycling advocates to rethink  
12 their position, and basically, others elect to use bits of data  
13 for their own purposes.

14 So, you know, I like the fact that she's there to push  
15 the envelope, but at the same time, she is one of three, and  
16 she's a subcontractor for the study.

17 The other thing is, I think, noteworthy that some of  
18 the recycling advocates have really touted some of the work  
19 she's recently done. She came out with -- as a project leader  
20 on a study that's out that takes on building codes, and it takes  
21 on building codes from the standpoint that, because they specify  
22 materials versus tinsel strength, let's say, it actually  
23 precludes the use of recycled materials. So, that study in  
24 itself may really be an impetus to change some building codes.

25 CHAIRMAN LOCKYER: Mostly plastic pipe.

26 MS. MILLER: Well, lumber issues. Actually, I guess  
27 you can't call it lumber, but the actual that would be  
28 replacement for lumber is the majority of, I think, one of her



1 focuses in the study.

2 CHAIRMAN LOCKYER: Other questions from Members?

3 SENATOR PETRIS: Just to continue a little bit on the  
4 same vein.

5 I'm concerned about two conflict areas, one that  
6 Senator Lockyer has mentioned. According to our notes here, Ms.  
7 Scarlett is known nationally as one who has stated in written  
8 articles in leading journals, you know, the Wall Street Journal,  
9 The L.A. Times, her open hostility to any governmental  
10 involvement in recycling programs, which gives her kind of a  
11 lopsided sided view coming into this kind of situation.

12 I don't know how we can get a fair and open assessment  
13 if she has a strong view that says, recycling should be done by  
14 the free market, no government role whatsoever.

15 I don't think it was the free market that started the  
16 recycling idea in the first place. I think it started with some  
17 bureaucrat somewhere. I wouldn't take a bet on it, but that's  
18 my gut feeling.

19 The other area is, it goes back to the Governor under  
20 SB 1178. His clearly stated position, I think, puts him in  
21 conflict with what this program is supposed to achieve. So,  
22 you've got the appointing authority, plus the appointee, in a  
23 situation that, in my mind, raises some questions.

24 MS. MILLER: I can --

25 SENATOR PETRIS: Excuse me.

26 I've raised this question before. What it amounts to  
27 is, you have a person with a long track record, with a well  
28 expressed, articulate, strong view on a policy. Then you



1 appoint that person to an agency to administer that policy, to  
2 which that person has been totally opposed all through the  
3 years.

4 Well, it's not fair for ask him or her to do an  
5 intellectual sommersalt and say, "All of a sudden, I'm all in  
6 favor of this. That's why I'm running it."

7 This comes close to it. It's not quite as dramatic as  
8 some we've had in the past.

9 MS. MILLER: As far as Lynn Scarlett is concerned?

10 SENATOR PETRIS: Yes.

11 MS. MILLER: One of the things that at least I've found  
12 with Lynn Scarlett, because I point-blank asked her that  
13 question, and she feels that there definitely is a role for  
14 government in recycling. A lot of things may be quality control  
15 and others.

16 But I think the initial reaction of her saying, "All  
17 government as it relates to recycling is bad. It needs to get  
18 out. Government needs to completely get out of it," is not her  
19 perspective.

20 But at the same time, that's also why I was pleased to  
21 see Bill Shireman and Jim Gibson also as contractors in this  
22 study, because I think we need to explore all the alternatives  
23 in order to have a credible study.

24 To say, "Okay, we're looking at, what if government was  
25 not involved, what would be the end result of that? What would  
26 we have to give up if there wasn't certain parts of this program  
27 in place in the future?"

28 Those are things I think we need to actually explore

1 and get those answers for. We may find those answers a little  
2 different than some people have as preconceived notions about  
3 the program. We may find that the intervention that we have in  
4 some areas is very valid.

5 At least, that's where I'm coming from, to look at  
6 having three different individuals involved in the development  
7 of this study with different points of view, definitely. And I  
8 think that, in itself, creates a balance for the study, that I  
9 want a clear factual review.

10 When you talk about the Governor's --

11 SENATOR PETRIS: You think you have balance there with  
12 the three?

13 MS. MILLER: With all three of them, yeah, especially  
14 Bill Shireman, having been the originator of the original Bottle  
15 Bill in California, and understanding -- I mean, taking him --  
16 and I had talked to some environmental groups at first, and they  
17 spoke very highly of him, so I felt very comfortable with the  
18 fact that the three of them together applied and looking at that  
19 mix to get a variety.

20 SENATOR PETRIS: Thank you.

21 CHAIRMAN LOCKYER: Are there any other questions from  
22 Members.

23 MS. MILLER: Was there a question as far as our  
24 statutory authority? I know that that was raised.

25 We have specific statutory authority within our act to  
26 do studies like this. And we have done so in the past.

27 CHAIRMAN LOCKYER: I notice the oil and gas study done  
28 by Mr. Heidig. He had statutory authority, and it was basically

1 junk. And the contractor, the bids were tampered with in order  
2 to get the right person he wanted to do the study, and then the  
3 pay is was increased.

4 So, all I can tell you is, we look at the paper trail.  
5 Some of them change it before we get it; we've had that, too.  
6 Not him, different one.

7 MS. MILLER: But I am a new Director, so I come with, I  
8 hope, a little different perspective than that.

9 CHAIRMAN LOCKYER: I hope so, too.

10 Did anyone present wish to make any comment.

11 I note that we have till the end of Session to act on  
12 this. I'm going to recommend that we do that.

13 Yes, please.

14 MR. VINK: Thank you, Mr. Chairman.

15 My name is Erik Vink. I'm with American Farmland  
16 Trust. We're a nonprofit farmland conservation organization.

17 I'm here to speak in support of Elin Miller's  
18 appointment. We're very excited about this appointment.

19 She's a strong exporter of agricultural land  
20 conservation efforts. She knows the issues, understands these  
21 issues better than practically anyone we've worked with in this  
22 position over the last decade, and in particular, is a real  
23 champion of the Agricultural Land Stewardship Program that was  
24 created in 1995 by Senator Costa's legislation.

25 Elin's already been effective at securing federal  
26 moneys for this program from the farm bill efforts in  
27 Washington, D.C. She personally walked around the Governor's  
28 support letter and corralled a number of different people. We

1 are very pleased with her efforts there.

2 She works well with a number of different individuals,  
3 I think, as someone who can see all sides of the issue, asks  
4 incisive questions, and then takes action and is very  
5 proactive.

6 In closing, we couldn't be more supportive of her  
7 confirmation and ask for your support. Thank you.

8 CHAIRMAN LOCKYER: Thank you.

9 Next.

10 MS. HUMISTON: Good afternoon, Senators. Thank you for  
11 an opportunity to take just a few moments and speak in support  
12 of this confirmation.

13 I'm Glenda Humiston. I'm currently serving as Vice  
14 President for the California Association of Resource  
15 Conservation Districts.

16 Resource Conservation Districts, and I'll use the  
17 acronym, RCDs, around the state are responsible for the  
18 conservation of water quality, habitat, agricultural lands, and  
19 in particular, were formed to the reduce soil erosion back in  
20 the Dust Bowl days. Since then, we've expanded into working in  
21 urban areas, and have over a hundred districts serving over 80  
22 percent of this state.

23 The Districts' philosophy is to try bring all the  
24 interest group and the issues to the table and find a solution  
25 to the problem, and avoid the litigation and conflict that, all  
26 too often, seems to be the only solution for these types of  
27 issues.

28 In the short time we've worked with Elin, we have



1 noticed that she, too, has this philosophy of bringing the  
2 various interest groups to the table and utilizing all of them,  
3 and their ideas, to try to find workable solutions. And we have  
4 really appreciated this leadership from her.

5 In particular, I would note that the California  
6 Conservation Partnership effort, which has been ongoing the past  
7 several months, has moved forward far rapidly because of the  
8 efforts of Elin Miller.

9 We strongly support her confirmation to the head of the  
10 Department of Conservation. Thank you.

11 CHAIRMAN LOCKYER: Thank you.

12 MS. DELMATIER: Mr. Chairman and Members of the  
13 Committee, Denise Delmatier, with the Gualco Group on behalf of  
14 Norcal Waste Systems.

15 We also would like to express our support for the  
16 confirmation of Ms. Miller. In particular, our client, Norcal  
17 Waste Systems, has a very long-standing history of operation in  
18 both the AB 2020 program and the AB 939 program. Norcal has  
19 many operations under the Convenience Zone Recycling Program, as  
20 well as the traditional Solid Waste Facilities Program in 939.

21 I was one of those calls that Ms. Miller referred to  
22 as a result of the RFP going out for purposes of a recycling  
23 study.

24 In particular, I'd like to comment on one previous  
25 study that prompted our strong concern regarding and the reasons  
26 we placed the call. Previous study, Little Hoover Commission's  
27 study, that took place a few years back, made some sweeping  
28 recommendations on overhauling the AB 939 program.

1           When that hearing took place in Southern California, I  
2 placed a telephone call to the Little Hoover Commission and  
3 posed the question as to what the contents and the substance  
4 matter of the study and the hearing would be. The answer that I  
5 was given at that time was that the hearing would be solely on  
6 the Beverage Container Recycling Program, and not anything to do  
7 with the AB 939 program.

8           As a result, my discussions with other representatives  
9 of the waste industry, and the recycling industry, and the  
10 public waste industry, local government, none of us went down to  
11 that hearing.

12           What took place, then, was a study, the Little Hoover  
13 Commission's infamous study, which made these sweeping  
14 recommendations as a result of Convenience Zone Operators and  
15 those interests commenting on the separate and distinct program  
16 under AB 939.

17           Those recommendations then became the subject of  
18 legislative proposals which were extremely controversial, and  
19 were eventually defeated in the Legislature.

20           So, when I called Ms. Miller, I requested some time,  
21 and quite frankly, was given an hour-and-a-half's time. As a  
22 result of some conflicting schedules, some of the other  
23 representatives of the waste industry couldn't make the meeting,  
24 and I requested that Ms. Miller reschedule the meeting.

25           Her response to me was that, no, Denise, I'd really  
26 like to meet. And if it's only you, could you please come over,  
27 and I'd be happy to accommodate the schedules of the rest of the  
28 group at another time.

1           So, her interest in trying to address the concerns of  
2 the waste-recycling industry, local government, environmental  
3 community, I thought was very sincere and was very pleased at  
4 the response.

5           And to reiterate what she said earlier in her  
6 testimony, she comes into this with no preconceived notions.  
7 So, when the study RFP went out, it was intentionally broad so  
8 as not to preclude and have a front-loading of bias going into  
9 the study.

10          Quite frankly, that was the problem with the Little  
11 Hoover Commission's study, a previous study, that is erroneous  
12 because it did not have the representation of the traditional  
13 waste recycling folks.

14          Quite frankly, necessarily because of the overlap  
15 between the two programs, curbside operators who operate under  
16 the 939 program are not certified by the California Integrated  
17 Waste Management Board, but in fact are certified by the  
18 Department of Conservation. The Department of Conservation, the  
19 Division of Recycling, provides the only financing mechanism  
20 available to curbside recycling operators under their processing  
21 fee, and handling fee, and subsequent fees that were amended  
22 into the wonderful bill that this Legislature passed, SB 1178,  
23 O'Connell, of last year.

24          So, there is a direct statutory cross-over between  
25 AB 939 and the 2020 program, and it presents a challenging  
26 problem for both the Waste Board and the Department to work  
27 together in a complementary fashion.

28          We are encouraged by Ms. Miller's response to both



1 private meetings with myself, as well as representatives from  
2 the waste industry and local government that there will be the  
3 comprehensive look at these programs, and so that they can go  
4 forward in complementary fashion, and that both 2020 and 939 can  
5 be implemented, and stay successful, and continue to do  
6 wonderful recycling things that we've accomplished to date.

7 I'd be happy to answer any questions.

8 CHAIRMAN LOCKYER: Thank you.

9 Next, Senator Ayala.

10 SENATOR AYALA: I've listened to the testimony pretty  
11 closely, and I'm not going to question your statutory authority  
12 to conduct this study.

13 My only question is, was this a budgeted item? Where  
14 did \$300,000 come from?

15 MS. MILLER: \$300,000 is within our budget. And I  
16 guess --

17 SENATOR AYALA: For what purpose?

18 MS. MILLER: Up to \$300,000 is within the contract for  
19 the study.

20 SENATOR AYALA: The study was in your proposed budget?

21 MS. MILLER: Not as a line item in the budget. Our  
22 budget has -- in fact, there is a unit, and that's the statutory  
23 authority that I referred to before -- a unit had been  
24 established a few years ago, that its basic charge is to analyze  
25 alternative programs, look at efficiencies, et cetera, et  
26 cetera, within the program. So, there's been a variety of  
27 different studies done before.

28 For example, the Blue Ribbon Task Force was a report



1 that was published that Mr. Heidig had published while he was  
2 there. There's been an evaluation of public outreach with a  
3 study in 1993, as well as a non-CRV container sales study that  
4 was done by Earnst and Young as well in 1993, all under the  
5 provisions of this chapter.

6 That's the thing --

7 CHAIRMAN LOCKYER: Is it the general fund that supports  
8 that unit?

9 MS. MILLER: No. These funds are funds that are in our  
10 CRV fund for the program. So, it's basically what's remaining  
11 when you've got about an 80 percent recycling rate, that's 20  
12 percent that isn't recycled, that is generated as part of the  
13 fund. So, it's within our budget authority under that fund.

14 SENATOR AYALA: But during the budgetary discussions,  
15 did this surface before the conferees, that a study would be  
16 taken for this purpose?

17 MS. MILLER: No, not to my knowledge. It would not  
18 have occurred.

19 SENATOR AYALA: I'm not quite understanding where the  
20 money's coming from. Is it just a cushion your Department has,  
21 or where would \$300,000 come from?

22 MS. MILLER: We have within the unit, we have  
23 flexibility to do studies. We have contracts with a variety of  
24 people where we have flexibility to use that to analyze  
25 different parts of our program.

26 And so, it was from, basically, the Division of  
27 Recycling's budget, that is made up of CRV, and processing fee,  
28 et cetera, that to do the study comes from.

1 I've been amazed, actually, at the amount of studies --  
2 and that's why I said, another study -- the amount of studies  
3 that this particular Department has done regarding recycling.

4 But when you take a look at the varied constituencies,  
5 \$260 million we're talking about for a program, and so, I'm a  
6 rather frugal person, but you get what you pay for.

7 My thought was first having outside consultants doing  
8 it so it wouldn't be biased by staff and by our own perceptions,  
9 so, those consultants doing it. And also having them involve a  
10 lot of outside stakeholders. That takes time, and so that's  
11 why we're looking at up to \$300,000 to be able to perform this  
12 study.

13 SENATOR AYALA: I guess the reason I bring it up is  
14 because I had an item removed by the conferees for mitigation of  
15 prison expansion in my area for the city and to the schools, and  
16 it was taken out completely. But we have money to provide a  
17 study for the recycling programs.

18 I'm a little confused how that happens, how that comes  
19 about, that any agency has money available to make these  
20 studies, and yet the conferees denied something obviously that's  
21 needed to mitigate any expansion of prison facilities back in my  
22 home area, and they took it out.

23 That's the reason I'm having a problem understanding  
24 where the financing comes for these programs.

25 MS. MILLER: Once again, within our budget, and a lot  
26 of different studies have been done, but at least from what I  
27 have gathered, this is the first top-to-bottom, comprehensive  
28 review of this program, that we can put everything on the

1 table. Let's look at it and come up with some ideas and options  
2 that then we can bring forward to the Governor and the  
3 Legislature.

4 CHAIRMAN LOCKYER: How many other studies are going on  
5 right now? Are there other contracts of this sort?

6 MS. MILLER: Other contracts for studying recycling,  
7 none.

8 CHAIRMAN LOCKYER: Any subject matter.

9 MS. MILLER: Any subject matter, I believe we're doing  
10 a study with -- in fact, it's about to be concluded -- with the  
11 Department of Hazardous Substance, or Department of Health  
12 Services now, on -- it's called a Norm study. It's on potential  
13 radioactivity. That study, I believe, had been called for  
14 because of some issues that had been raised nationally in oil  
15 and gas wells. So, that study is ongoing.

16 The study you referred to before, the old oil and gas  
17 study, that came to my attention in December this year, and  
18 people were quoting the drafted study. And I asked for that  
19 study to be finalized, so we got it. We will get it out there.

20 Also, the Board of Equalization needed some historical  
21 sales numbers, so I hope to have that study completed this  
22 summer.

23 There was no specific statutory authority for that  
24 study. Instead, it was done under general authority, I  
25 understand, of the Department.

26 CHAIRMAN LOCKYER: The Board of Equalization?

27 MS. MILLER: Yes. This was the oil and gas study you  
28 referred to earlier that the Board of Equalization wanted to



1 utilize because of historical sales data that they could use for  
2 estimations.

3 CHAIRMAN LOCKYER: Is there anyone else that wishes to  
4 comments?

5 MR. MEACHER: Good afternoon, Mr. Chairman and Members  
6 of the Rules Committee.

7 My name is Robert Meacher. I'm the Chairman of the  
8 Board of Supervisors for Plumas County, and I'm here also  
9 representing the Regional Council of Rural Counties today.  
10 Usually, you would probably expect to see Les Cohen, our  
11 legislative advocate, but the Rural Counties felt that this  
12 appointment was so close to home in affecting us that they asked  
13 me to come.

14 I urge your support for the confirmation of Elin Miller  
15 as Director. I'll try to be brief, but there's a few points  
16 that I'd like to bring up to your committee today.

17 And that is the fact that in rural counties, there's a  
18 lot of the Department's programs which impact our local  
19 governments, such as the Williamson Act and SMARA, which you've  
20 talked about, and also seismic hazard programs.

21 We feel that Elin is an ideal appointee because of her  
22 proven track record with the County Agricultural Commissioners.  
23 I believe, if you have any backup in your packets, you've  
24 received several letters, or many letters, from Agricultural  
25 Commissioners, including one from ours, Fred Silver in Plumas  
26 County, who worked with Elin when she was at the Pesticide  
27 Board.

28 She's already reached out to local governments and



1 planners, and I'm going to read you some bullets here.

2 At the Department of Conservation, she has initiated a  
3 strategic planning process in inviting those entities directly  
4 impacted by Department programs, including the rural local  
5 governments, participate in the Department's strategic planning  
6 focus groups and develop recommendations for improving how the  
7 Department serves its clients.

8 She has met with the planning directors and supervisors  
9 to find out what issues they have with the Department programs,  
10 and how the Department can provide needed services.

11 As a representative of a rural county, and for RCRC,  
12 the Regional Council of Rural Counties, I believe Elin's  
13 background, and with my conversations with her, because I sit  
14 and represent the rural counties on the Governor's Executive  
15 Council on Bio-diversity, Elin's one of the department heads  
16 that's there. It gives us an opportunity to talk. There's  
17 other rural counties that Elin has talked with. She's addressed  
18 a Board of Directors for RCRC.

19 All the counties in RCRC feel very comfortable with  
20 this appointment. For example, the Surface Mining and  
21 Reclamation Act, it is a relatively new program for local  
22 governments which have active mines in their jurisdiction. It's  
23 a very complex program for our small planning departments to  
24 deal with.

25 Elin has expressed her interest in working with us on  
26 that to achieve the goals of SMARA. Rural counties have a more  
27 difficult time with compliance due to the lack of expertise that  
28 we have and financial resources.

1           We also are burdened with the fact that in a county  
2 such as Plumas, which is about the size of the state of  
3 Maryland, 75 percent of our land base is federally controlled.  
4 So, with that in mind, there's a real need for the Department to  
5 help us inter-react with the federal agencies when we're dealing  
6 with SMARA compliance. Believe me, working with the Forest  
7 Service is not always easy to do when it comes to SMARA, and I  
8 am personally aware of some problems in just communication. And  
9 I see the DOC as integral as far as small, as in resources,  
10 financial resources, a small county having the Department's help  
11 in dealing with SMARA and the federal agencies, communication.

12           She will not be skirting her responsibilities with the  
13 implementation of the act. She's a problem solver and can  
14 address the problems that remain with the program. She's  
15 helping us implement the program. For example, she's directed  
16 staff to provide technical advice to lead agencies which don't  
17 have the expertise in SMARA, as I just mentioned.

18           We believe that Elin's proactive, that she's moving in  
19 the direction the Governor intended, on both human resources and  
20 natural resources, taking a proactive role.

21           We encourage the Committee to support us in confirming  
22 Elin.

23           CHAIRMAN LOCKYER: Thank you.

24           MR. MEACHER: Any questions? Thank you.

25           CHAIRMAN LOCKYER: Thank you.

26           Anyone else who hasn't commented? Yes.

27           MS. BARR: Mr. Chairman, Members of the Committee, I'm  
28 Linda Barr, representing the Sierra Club.

1           While we're not here in specific opposition to Ms.  
2 Miller's appointment, we do have serious concerns regarding the  
3 Department of Conservation's lack of enforcement of the Surface  
4 Mining and Reclamation Act. Many of these issues have already  
5 been raised and discussed here this afternoon.

6           The Department of Conservation has clear authority to  
7 enforce compliance with SMARA, and they should be doing a whole  
8 lot more. We believe that proper reclamation is the  
9 responsibility of the mining owner, not the public. We're  
10 really concerned that the public will end up footing the bill  
11 for the lack of enforcement.

12           So, we hope you'll take these significant problems into  
13 account as you consider Ms. Miller's appointment, and we hope  
14 that enforcement of SMARA becomes a top priority for the  
15 Department.

16           Thank you.

17           CHAIRMAN LOCKYER: Have we heard from everybody who  
18 wishes to comments.

19           Let me ask with respect to the Williamson Act, that's  
20 been the area that there seems to have been the most enthusiasm  
21 from those that you work with about your attitudes and efforts.

22           Following up on that, are there are any particular  
23 problems associated with preserving ag. land that you'd like us  
24 to just know about, that we ought to be thinking about in terms  
25 of legislative or budgetary matters, or anything of that sort?

26           MS. MILLER: There certainly are a lot of challenges  
27 for the future. There's been some studies that have looked at  
28 specifically the Central Valley and some challenges there in the



1 future. The potential of a million acres prime farm land going  
2 out of production by, say, the year 2040, was a report that was  
3 issued this fall.

4 I think that points to the need for us to look at a lot  
5 of different opportunities and tools. We have the Williamson  
6 Act Advisory Committee that is basically there to look at  
7 refinement of the act, to look at different changes in the act  
8 itself.

9 But we're also branching out, and I co-chair that  
10 committee with the Department of Food and Agricultural, we're  
11 branching now into looking at other tools. One such tool was SB  
12 275 that Senator Costa passed last year, to look at long-term  
13 conservation easements. We're exploring other possibilities of  
14 other tools that can be lent to local agencies, because it's  
15 really a local decision. But as far as I see my role in the  
16 state, if we can provide a variety of tools, a variety of data,  
17 that then the local communities can utilize to make their  
18 decisions, that's the key.

19 CHAIRMAN LOCKYER: Okay, if there aren't other  
20 questions, I'd like to suggest that you have an opportunity to  
21 talk with the Senators who've expressed concerns before we go to  
22 vote. I think it would be useful for them to hear some detail  
23 about the methodology of the study, things of that sort, just so  
24 they'll be better acquainted with the facts.

25 SENATOR BEVERLY: On that study, I want to ask one  
26 question.

27 When is it due?

28 MS. MILLER: I would like to see the study completed by



1 this fall. Not knowing exactly what the result is going to be,  
2 if there's a lot of concensus, then I'd like to have that go  
3 then as a recommendation to the Governor, then come out as a  
4 legislative package.

5 SENATOR BEVERLY: By the terms of the contract for the  
6 study, when is it due?

7 MS. MILLER: This fall.

8 SENATOR BEVERLY: Like?

9 MS. MILLER: I think it's October is the date.

10 CHAIRMAN LOCKYER: We have to act on this before the  
11 end of August.

12 Senator Petris.

13 SENATOR PETRIS: I want to go back to those 146 mines  
14 that have ceased operation and may be illegally abandoned  
15 without doing a proper reclamation, and so forth.

16 Can you find out for us how much that would cost the  
17 taxpayers if that condition continued and none of the owners  
18 came back to do what they're supposed to do after abandonment?

19 MS. MILLER: If there already has been a rec. plan  
20 filed, yes, that would be a lot simpler, or then we could take a  
21 look at those.

22 But if the question is total amount of dollars that the  
23 state would be liable for if all of them were, is that your  
24 question?

25 SENATOR PETRIS: Yes.

26 MS. MILLER: We could probably come up with an estimate  
27 for you.

28 SENATOR PETRIS: At least an estimate.

1 MS. MILLER: Yes, but to understand, once again, the  
2 characterization of those being abandoned mines by law is not a  
3 correct assumption. Those are mines that require interim  
4 management plans so we can come back and say, for the mines  
5 within this universe that we feel are potentially abandoned, I  
6 think, is a different look than to say which have or have not  
7 filed, because of reporting time, interim management plans.

8 I think you're trying to get to the bottom line, I  
9 assume. It's what's the liability for potentially abandoned  
10 mines. And I think we could come up with some kind of an  
11 estimate.

12 SENATOR PETRIS: Thank you.

13 CHAIRMAN LOCKYER: I would guess that's the kind of  
14 question Senator Sher will want to have an answer to.

15 MS. MILLER: Well, that, or my thought is that he  
16 probably wanted to focus on, really, what am I doing. And the  
17 focus of gearing up our enforcement activity in this area is  
18 where I'm headed.

19 CHAIRMAN LOCKYER: I think that's constructive, so I'd  
20 like to just recommend you do that in the next couple of months.  
21 I think that'll help.

22 The other thing I would just point out, the oil and gas  
23 study we're dusting off or completing, I don't remember all the  
24 details, but I remember the same argument being made, that we  
25 didn't want the bias of the state employees, so they contracted  
26 with someone who works for the oil industry.

27 MS. MILLER: I understand.

28 CHAIRMAN LOCKYER: That's who you're getting with your

1 consultant.

2 SENATOR PETRIS: Same question on the ones that are  
3 currently operating without financial assurances, 486?

4 MS. MILLER: Uh-huh.

5 SENATOR PETRIS: If they figure out they can't do it,  
6 and they skip out, what would that cost be? Might be  
7 difficult to estimate.

8 MS. MILLER: We can take a look at that too, because I  
9 think the whole key there is, there's quite a few that are in  
10 that small mine category. And if we come up with some solutions  
11 with the this bonding mechanism, then, in essence, we'll be able  
12 to take care of that whole group and get those in compliance,  
13 and that being a high priority, to get those mines in  
14 compliance.

15 SENATOR PETRIS: Thank you.

16 CHAIRMAN LOCKYER: Thanks a lot.

17 Anything you want to say in conclusion? We'll be back  
18 on the agenda, perhaps for a vote only, but we'll have some more  
19 conversation about some of the studies and details.

20 MS. MILLER: Okay. As far as timing, you said to try  
21 to get with Senator Sher. Was there another Senator you  
22 suggest?

23 CHAIRMAN LOCKYER: The Chair of the committee.

24 MS. MILLER: Talk to Senator Hayden?

25 CHAIRMAN LOCKYER: Yes, I think it would be useful to  
26 visit with them, and hopefully that'll assist in --

27 MS. MILLER: Speeding it along and resolving the  
28 issue.

1 I appreciate your time. And I had hoped I would be  
2 able to fully answer all your questions. Certainly, if there's  
3 any additional --

4 CHAIRMAN LOCKYER: You did very well, but let's wrap  
5 some of the details.

6 MS. MILLER: Okay, great. Thank you.

7 CHAIRMAN LOCKYER: Thank you.

8 Mr. Sterpa is next. Good afternoon, sir.

9 MR. STERPA: Good afternoon.

10 CHAIRMAN LOCKYER: How are you?

11 MR. STERPA: Mr. Chairman, Members of the Committee,  
12 Ms. Michel, I'm here this afternoon to seek your reconfirmation  
13 to the Board of Directors of the California Housing Finance  
14 Agency.

15 I was first elected -- or appointed to the California  
16 Housing Finance Agency in 1984. For the past 12 years, I have  
17 had the responsibility of giving directions to the  
18 fourteen-member Board.

19 I think the accomplishments of the Agency are very  
20 numerous. I feel that I've been part of it. We have seen a  
21 struggling agency at the beginning to be a very forceful agency  
22 that is more like a financial institution of the State of  
23 California.

24 As far as my qualifications, I'm sure that you have it  
25 in front of you. If there is anything that I can do to answer  
26 any of the questions, please feel free to ask.

27 Thank you.

28 CHAIRMAN LOCKYER: Thank you, sir.



1 Well, I always defer on matters of the Mediterranean to  
2 the reigning Greek.

3 SENATOR PETRIS: First cousins.

4 MR. STERPA: That's right.

5 CHAIRMAN LOCKYER: What's been the toughest problem  
6 during your years of service? Is there any that stands out in  
7 your mind that is a persistent difficulty?

8 MR. STERPA: Not really. Our biggest difficulty has  
9 always been not enough money to help the first-time buyers and  
10 the low and very low income tenants.

11 Somehow, we have managed to be able to live with it.  
12 We have increased our allocation. We have had our allocation  
13 increase through the years. We have, through recycling of  
14 bonds, bond issues, we have increased what we can do for the  
15 people of the State of California.

16 And we are very proud that from anywhere approximately  
17 less than one billion dollars in loans made prior to 1984, we  
18 are today, we're maybe in excess of \$7 billion in loans, and  
19 about 60,000 first-time buyers have been served, as well as  
20 15,000 low-income tenants have been also been helped.

21 CHAIRMAN LOCKYER: So, do you have a view, Mr. Sterpa,  
22 on whether there should be a consolidation of housing agencies  
23 and programs in the state.

24 I guess we have three, if you count the Department, and  
25 then the Agency, and then the Tax Allocation Committee.

26 Would there be efficiencies achieved if they were  
27 consolidated, or does it matter?

28 MR. STERPA: Well, I you understand that there was a

1 study made. And there were 331 -- approximately 31 programs in  
2 effect here in the State of California.

3 CHAIRMAN LOCKYER: Yes.

4 MR. STERPA: They have asked our Agency to be part of  
5 it, or a possible solution, but after many hashing things over,  
6 it said the conclusion was to leave the things alone.

7 Remembering that our Agency's more like financial  
8 institution, we get involved in loaning money rather than making  
9 policies for the State of California.

10 CHAIRMAN LOCKYER: Other questions from Members.

11 SENATOR PETRIS: Yes, Mr. Chairman.

12 I'm wondering about the fact that we have three  
13 different state housing agencies: ACD, and the California  
14 Housing Finance Agency, and the Tax Credit Allocation  
15 Committee.

16 With limited resources that we have, this seems to me  
17 to have a lot of duplication, where a streamlined consolidation  
18 might be much more helpful.

19 Have you seen that as a problem from where you sit?

20 MR. STERPA: Well, from our point of view, I personally  
21 do not get involved in these matters.

22 Our policy, the policy of the Board is to develop  
23 policies for making loans at CHFA. As I said, it seems like  
24 that they have been talking about consolidating. HCD does a lot  
25 of things that we do not do.

26 We only makes loans to first-time buyers, and make  
27 loans to multi-family units when those multi-family units are  
28 serving low and very low income tenants. That's only our only

1 purpose.

2 SENATOR PETRIS: That's in the multiple.

3 In the single family, one of my concerns over the years  
4 has been too much emphasis on the single family dwelling, which  
5 takes a higher income person. I don't mean high income, but  
6 certainly above the low and very low income level.

7 I'm concerned about the proportion of our money that's  
8 being allocated for what I think was the original intention, for  
9 low and very low income people, to provide a roof over their  
10 heads through the loan program.

11 What is that proportion today?

12 MR. STERPA: We have increased tremendously the amount  
13 of money that we are allocating and giving to multi-family  
14 units. In fact, I can say that even three years ago, we had \$31  
15 million worth of low income family dwellings. And today, we  
16 have in excess of over 97 million for the year 1997. So, has  
17 been a tremendous increase.

18 We haven't turned down any of the multiple units that  
19 have been brought to us, unless they were not worth dealing  
20 with. We are seeking a lot of nonprofit organization coming to  
21 us, because we feel that not only they are equipped to handle,  
22 and they come in with a certain amount of money of their own,  
23 and they're not looking for profits. They're looking only to  
24 serve the low income and very low income tenants.

25 SENATOR PETRIS: Would you say that their role has  
26 increased since you've been appointed?

27 MR. STERPA: Yes. We have seen the role of the  
28 multi-family unit increase tremendously. And we hope that in



1 the -- we have a five-year study, or actually a five-year plan.  
2 At the end of this cycle, the five-year cycle, we'll be doing in  
3 excess of \$750 million worth of low and very low income family  
4 units.

5 SENATOR PETRIS: Do you have an inventory of what the  
6 need is?

7 MR. STERPA: At this present time, the inventory of  
8 single family residence is approximately 45 billion -- I'm  
9 sorry, 45,000 loans. In the multi-family units, we have an  
10 inventory of about 17,000 units.

11 SENATOR PETRIS: What's the need beyond that?

12 MR. STERPA: In need, very frankly, the need at this  
13 present time, we had a very lack of need for a while because of  
14 the prices here in California rising so fast and so high. But  
15 this last year or two, we have seen an increase in demand for  
16 that.

17 And we are fortunate that between what we have been  
18 allocated and we are recycling from previous bond issues, we are  
19 able to meet all the needs that are asked.

20 I can say that if we relax additional -- what we asking  
21 for, we could be doing much more. But we really don't have the  
22 money. Also, I'm not sure that we would be serving the purpose  
23 of the state by doing that, relaxing our requirements.

24 SENATOR PETRIS: Another way to do it would be to have  
25 one agency instead of three.

26 MR. STERPA: Well, it has been before talked about, the  
27 possibility of doing.

28 SENATOR PETRIS: We have 31 different programs.



1 MR. STERPA: The 31 different programs, the only  
2 program that really is financially responsible, without giving  
3 anything away, and also helping, is the California Housing  
4 Finance Agency program, because we don't depends on the state  
5 fund. We go out in the market and borrow money, and we pay them  
6 back. And we -- in fact, our record is extremely great because  
7 Standard and Poor, they've given us a double-A rate. And so,  
8 Moody has given us A-one-plus rate.

9 SENATOR PETRIS: What's the percentage of that money  
10 that goes into multiple housing, and what percentage goes into  
11 the single family?

12 MR. STERPA: Usually it's about anywhere, 75 percent to  
13 single family, and 25 percent to multi-family.

14 But again, I want to emphasize that we haven't turned  
15 down any multi-family unit that they've asked us to finance.

16 SENATOR PETRIS: As long as they're within the  
17 eligibility.

18 MR. STERPA: Correct.

19 SENATOR PETRIS: Apparently there's been some criticism  
20 of your collection and reporting of data. Not you, the Agency,  
21 I mean.

22 You're required now, since 1988 -- actually it was  
23 1989, to provide information to the Legislative Analyst so they  
24 can issue an annual report on the housing that's financed with  
25 tax-exempt mortgage revenue bonds issued by CHFA and local  
26 government agencies.

27 We're trying to get a handle on the tremendous amount  
28 of overlapping and so forth.

1           Are you familiar with that effort to improve? If you  
2 are, how is it coming?

3           MR. STERPA: Well, I was a little surprised hearing  
4 that there has been criticism.

5           CHAIRMAN LOCKYER: Excuse me. Let me just interrupt so  
6 that we can open the roll. Senator Lewis has to leave and wants  
7 to be reported as voting Aye.

8           SENATOR LEWIS: That's right.

9           MR. STERPA: I was very surprised to hear that there's  
10 been criticism of the Agency on reporting. I know that our  
11 financials have been provided to the Legislature every year --  
12 well, since I -- I thought it had been provided before 1989, but  
13 definitely --

14          SENATOR PETRIS: Let me put it a different way.

15          The complaint is that there's so many inconsistencies  
16 in the manner in which CHFA And the CDAC, the Debt Advisory  
17 Commission, collect and report the data, it makes it almost  
18 impossible to get all the information that's required by the  
19 Legislature. I don't know what makes it so complicated, but it  
20 also makes the annual review of the efficiency much more  
21 difficult.

22          MR. STERPA: Senator Petris, I would like to say that  
23 I'm surprised at this.

24          I would also like to promise to you and all the Members  
25 of the Committee that I will have Maureen Higgins investigate  
26 your question. And all of you will be receiving an answer from  
27 us.

28          I apologize. I wasn't aware of it.

1           SENATOR PETRIS: I can understand that. You may want  
2 to check with the Legislative Analyst, whoever is handling that  
3 in that office, and they can give you a little background on  
4 that, and provide you with the proper questions.

5           My basic concern, I might like to have you check on  
6 that, too, is the imbalance between the low and very low income  
7 level applicants, and the moderate or average income. For  
8 single family, it tends to be moderate and average income, of  
9 course, and the very low go into the multiple housing, which is  
10 understandable.

11          MR. STERPA: Well, we have adopted not too long ago a  
12 risk share program with FHA. And we are now in progress of  
13 coming up with about 7800 units that will be financed through  
14 this risk share between money that we have and money that FHA  
15 would be allocating for us.

16          And believe it or not, Maureen has done is such a great  
17 job with FHA, that they have actually allocated for us 25  
18 percent of the total amount of money that is being allocated in  
19 the United States for this effort. This will be going --  
20 definitely be going to multi-family units.

21          If I may say, sir, we are very responsive. Any time  
22 that someone would like to make -- tell us that possibly we are  
23 not doing something, and anything that we can do within the  
24 scope of the California Housing Finance Agency, we will be very  
25 happy to accommodate, especially low income and very low income  
26 tenants.

27          SENATOR PETRIS: There's some more specific information  
28 that says that a significant number of the single family homes



1 that are financed by your agency are in areas with relatively  
2 moderate housing costs and great amounts of new housing  
3 construction. The examples they give are Sacramento, Fresno,  
4 San Bernardino, Kern, Riverside, Tulare. Those counties  
5 together provide more than two-thirds of the CHFA single family  
6 loans.

7 That's because the amount of assistance that you're  
8 offered, I guess, through your limited resources is very  
9 modest. It's not quite enough to bring those in the lower level  
10 into the program.

11 MR. STERPA: Senator Petris, we did something about  
12 that.

13 At my last confirmation hearing, I had Senator Mello  
14 that brought that up. As you know, Senator Mello was from  
15 the -- is from the Salinas and Monterey County.

16 And he was wondering why his county wasn't getting any  
17 money, wasn't getting money.

18 And I said, well, the only answer I had at the time was  
19 that prices were too high in that county, and people were making  
20 too much money. All those ones not making enough money, the  
21 property values were too high.

22 We did something about that. In this last three  
23 years -- five years, as a matter of fact, we have gone through  
24 one decreasing in certain areas, high cost areas, such as even  
25 San Francisco, or Los Angeles, San Diego, any place, or even the  
26 Monterey County area, we have the decreased interest rate that  
27 we charge the buyers. We have given them 97 percent loan. We  
28 have relaxed our standards for qualifications.



1 And believe it or not, all of a sudden from 20 percent  
2 in these high cost area, from 20 percent of our loans were made  
3 there, now we are up to 35 percent. Trust we like to do more  
4 than that, but you know, there is so much -- prices are what  
5 they are, and qualifications are what they are also.

6 But we are doing something about that.

7 SENATOR PETRIS: Thank you.

8 CHAIRMAN LOCKYER: Is there anyone present who would  
9 wish to wish to ask any questions or make any statements.

10 Members of the Committee, that about does it.

11 Oh, I should ask, this is my only test of your service,  
12 how are you getting along with Maureen Higgins; okay?

13 MR. STERPA: I forgot to tell you, I have had three  
14 great Directors: Carney Hodge, who really put a lot of work in  
15 the Agency; then I had John Seymour, who really formulated a lot  
16 of new plans; now I have somebody who really does -- puts the  
17 things together. She knows the legislative arena. She knows  
18 how to handle the staff. I'm extremely proud to have her as our  
19 Director, thank you.

20 SENATOR BEVERLY: Move we recommend confirmation.

21 CHAIRMAN LOCKYER: We have a motion to recommend  
22 confirmation. Call the roll and add Senator Lewis as an Aye.

23 SECRETARY WEBB: Senator Ayala.

24 SENATOR AYALA: Aye.

25 SECRETARY WEBB: Ayala Aye. Senator Lewis added Aye.  
26 Senator Petris.

27 SENATOR PETRIS: Aye.

28 SECRETARY WEBB: Petris Aye. Senator Beverly.

1 SENATOR BEVERLY: Aye.

2 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

3 CHAIRMAN LOCKYER: Aye.

4 SECRETARY WEBB: Lockyer Aye. Five to zero.

5 CHAIRMAN LOCKYER: Good luck.

6 MR. STERPA: Thank you very much.

7 [Thereupon. This portion of the

8 Senate Rules Committee hearing was

9 terminated at approximately 3:57 P.M.]

10 --ooOoo--

CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

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20 day of June, 1996.

  
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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair  
SENATOR ROBERT BEVERLY, Vice Chair  
SENATOR RUBEN AYALA  
SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR JOHN LEWIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer  
PAT WEBB, Committee Secretary  
RICK ROLLENS, Consultant on Bill Referrals  
NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

DOUGLAS N. CORNFORD, Member  
Industrial Welfare Commission  
JIM ABRAMS, Executive Vice President  
California Hotel and Motel Association  
California Lodging Industry Association  
JULIANNE BROYLES  
California Chamber of Commerce  
WILLIE WASHINGTON  
California Manufacturers Association  
TOM RANKIN  
California Labor Federation, AFL-CIO  
DON WATSON  
International Longshoremen and Warehouse Union  
FERN M. LAETHEM, State Public Defender  
JAMES M. STUBCHAER, Member  
State Water Resources Control Board  
SENATOR JACK O'CONNELL





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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Appointees, Mr. Cornford. Good afternoon. Sorry to keep you waiting.

MR. CORNFORD: No problem, sir.

CHAIRMAN LOCKYER: Do you want to start with a statement?

MR. CORNFORD: If it pleases the Chairperson.

CHAIRMAN LOCKYER: Sure.

MR. CORNFORD: Chairman Lockyer, distinguished Members of the Senate Rules Committee, thank you for this opportunity to appear before you today relative to my appointment to the Industrial Welfare Commission. It's a privilege and honor.

I realize that in the performance of your varied responsibilities and duties on behalf of the State of California you are called upon, as you are today, to pass judgement on the qualifications of many individuals seeking confirmation to various state boards and commissions.

Obviously, the issue before you today is whether or not Doug Cornford should have the recommendation of the Senate Rules Committee for confirmation to an employer seat on the Industrial Welfare Commission.

If I might be slightly presumptuous, let me offer a couple of affirmative thoughts for your consideration.

First, even though I have been nominated for the IWC position by the incumbent administration to fill an open employer seat, I can assure you that I am not a rubber stamp for the administration. Additionally, I am not an ideologue, but

1 rather a centrist and will act as my conscience, faith, and  
2 intellect dictate.

3         Second, there is no denying, nor will I attempt to do  
4 so, that I come to the Commission with an employer-oriented  
5 background, which is no different than a labor seat appointee  
6 coming to the Commission with a union-oriented background. It's  
7 my understanding that the Commission was originally legislated  
8 into existence with this diversity of perspective in mind.  
9 However, I come to the Commission equally independent of being  
10 an employee of any statewide employer group or association, an  
11 independence that has been manifested on my votes on the  
12 minimum wage and overtime issues presently before the  
13 Commission.

14         Third, I come to the Commission as a native-born  
15 Californian with an educational background and practical work  
16 experience spanning some 35, 36 years in dealing on daily basis  
17 with the very subjects and topics that are the responsibility of  
18 the Commission. My life's work and education have been in the  
19 field of employee/employer relations, a subject that is at the  
20 very core of what the Commission is all about.

21         Fourth, contrary to what some professional union staff  
22 members may wish to believe, I have a deep and abiding respect  
23 for organized labor and the historical contributions that they  
24 have made and will continue to make on behalf of working men and  
25 women.

26         I would also like to believe that those elected union  
27 officials who have interacted with me on a regular, ongoing,  
28 daily basis would confirm that I am approachable, willing to

1 listen, a person who keeps their word, and someone who can be  
2 worked with on difficult and complex issues.

3 Fifth, as you are aware, I've had the privilege of  
4 serving on the Commission for the past eleven months, a time  
5 that has been very special and unique. A time to experience  
6 first-hand the broad diversity and complexity of the California  
7 work force and business community. I have attempted with all  
8 good conscience to keep an open mind on all of the issues and to  
9 be an active participant in the work of the Commission.

10 As a result of this experience, I did vote in favor of  
11 calling a Minimum Wage Board on the basis of the testimony that  
12 the current minimum wage may not be adequate, and secondly,  
13 proposed a motion to not open the issue of alternatives to the  
14 eight-hour day for 10 out of the Commission's 15 wage orders.  
15 Votes that may not be strictly in line with the wishes of some  
16 members of the business community, but votes that do represent  
17 my independence and ability to interpret the evidence before the  
18 Commission.

19 In closing, I would, if the Rules Committee concurs,  
20 like to continue to serve on the Commission. It is interesting,  
21 fascinating, and vital work. And it has been my pleasure to  
22 have been part of the Commission's activities.

23 I recognize that each of us may have differing views on  
24 what rules and regulations may be in the best interest and  
25 welfare of the working people of the state. But I can assure  
26 you that if confirmed, I will continue to attempt to do the best  
27 job I can for the ultimate good and benefit of all Californians.

28 Thank you for letting me make this opening statement.



1 Should you have any questions, I will do my best to answer them  
2 for you.

3 CHAIRMAN LOCKYER: I guess one issue that you might  
4 just tell us about is the discussions that have occurred  
5 regarding the eight-hour day.

6 MR. CORNFORD: Yes, sir.

7 CHAIRMAN LOCKYER: What were the circumstances in which  
8 petitions or discussion came before the Commission and your own  
9 ideas about that?

10 MR. CORNFORD: As you probably are aware, Senator, the  
11 initial request came to the Commission from the Governor's  
12 Office, asking us to examine whether or not the eight-hour day  
13 was in the welfare of the working people of the state.

14 As a result of that request, meetings were held in five  
15 various cities throughout the state, and endless hours of  
16 testimony, and large numbers of people had an opportunity to  
17 testify.

18 As a result of those five hearings, and an analysis of  
19 the piles of written testimony that we received, the Commission  
20 voted, and it was an unanimous vote of all members of the  
21 Commission, to only open five of the fifteen wage orders, and to  
22 keep the other ten orders closed, and keep the current rules  
23 intact relative to the eight-hour day.

24 CHAIRMAN LOCKYER: What were the five?

25 MR. CORNFORD: The five are Order Number One, which is  
26 manufacturing; Order Number Four, which is professional and  
27 clerical, and kind of an umbrella for all the orders that are  
28 not put somewhere else. Five is the public housekeeping. Seven



1 is mercantile, and Nine is transportation.

2 CHAIRMAN LOCKYER: You have a good memory. Could you  
3 tell us what the other ten were, if we asked?

4 MR. CORNFORD: Yes.

5 CHAIRMAN LOCKYER: Have you got a list there? Why  
6 don't you mention them just so we know what they are?

7 MR. CORNFORD: The ones that I was particularly  
8 concerned about, and one that I felt could not be justified, are  
9 Orders, I think, Ten and Twelve, dealing with the motion picture  
10 and television industry, where I was convinced that the  
11 testimony didn't support changing the rules in those  
12 industries.

13 The reason there is that an employee in those  
14 industries may well work for two or three employers in a given  
15 work week, and therefore, they would never have a chance to work  
16 a forty-hour work week for one employer, so it was not  
17 appropriate.

18 CHAIRMAN LOCKYER: Are those two different segments,  
19 movies and t.v.?

20 MR. CORNFORD: Order Number Ten is broadcast industry,  
21 radio or t.v. broadcasting. Order Twelve is motion picture  
22 industry, so they are divided, yes, sir.

23 CHAIRMAN LOCKYER: Now, what would happen with respect  
24 to the five that you mentioned? What is the process?

25 MR. CORNFORD: The process is that the Commission is  
26 currently attempting to draw up a charge to the Wage Boards, and  
27 there will be a Wage Board at this point for each of those  
28 five. And we are asking them to study creative alternatives to

1 the rigidity of the current rule, that the only rule you can  
2 have is one of two options, basically, either the eight-hour  
3 day, or through a very complex procedure, you can have a  
4 ten-hour work day, and to examine that.

5 They are also on three orders -- One, Four and Five --  
6 asking to look at a conflict between the state and federal  
7 government on the interpretation of administrative and executive  
8 exemptions. It's a technical kind of thing.

9 CHAIRMAN LOCKYER: I guess I'll shift you for a moment  
10 on to minimum wage.

11 MR. CORNFORD: Yes, sir.

12 CHAIRMAN LOCKYER: We've had copies of the discussions  
13 from hearings.

14 Did it ever go to a vote while you were there?

15 MR. CORNFORD: We voted unanimously to send the matter  
16 to a Wage Board. We are awaiting the written results of that  
17 Wage Board, which have not yet come back to the  
18 Commission.

19 CHAIRMAN LOCKYER: How long does that normally take?

20 MR. CORNFORD: It's my understanding that that report  
21 was supposed to be due here on the 28th of this month, but I  
22 have not yet seen it, Senator.

23 CHAIRMAN LOCKYER: Then you vote on adopting or  
24 changing that report?

25 MR. CORNFORD: Or conducting additional investigation.

26 CHAIRMAN LOCKYER: So, you're not bound by it?

27 MR. CORNFORD: Unless it's a two-thirds vote of the  
28 Wage Board, that is correct.

1 CHAIRMAN LOCKYER: If that happens --

2 MR. CORNFORD: Then it's my understanding the  
3 Commission is then bound by the action of the Wage Board.

4 CHAIRMAN LOCKYER: The Wage Boards, though, are pretty  
5 evenly balanced?

6 MR. CORNFORD: In this case, they were ten and ten.

7 CHAIRMAN LOCKYER: So, a two-thirds vote is sort of a  
8 rarity. Sounds like it might be?

9 MR. CORNFORD: Possibility.

10 CHAIRMAN LOCKYER: On some of the issues.

11 Are there other questions from Members?

12 Are there people who wish to comment and provide,  
13 first, supportive testimony?

14 MR. ABRAMS: Good afternoon. Thank you, Mr. Chairman,  
15 Members of the Committee.

16 My name is Jim Abrams. I'm the Executive Vice  
17 President of the California Hotel and Motel Association. I'm  
18 also appearing here on behalf California Lodging Industry  
19 Association.

20 I've had the pleasure of working with Mr. Cornford for  
21 approximately 20 years in a variety of different capacities  
22 involving not only the hospitality and lodging industry, but  
23 other industries as well.

24 When his name was put forward for the Industrial  
25 Welfare Commission, we whole-heartedly supported his nomination  
26 for several reasons.

27 One, we have found over the years that, in many cases,  
28 people on the Industrial Welfare Commission don't have the



1 day-in and day-out experience on the practical kinds of problems  
2 that confront the Division of Labor Standards Enforcement,  
3 employers, and employees constantly. Unless someone has spent a  
4 great deal of time and in a wide variety of circumstances  
5 involved in those kinds of problems, there really is a learning  
6 curve that is almost never met.

7 Mr. Cornford has done pretty much that exactly for  
8 three decades, plus he's extremely knowledgeable not only with  
9 respect to the hospitality industry, but with a wide range of  
10 industries covered by the Industrial Welfare Commission.

11 Also, it's something that's sometimes unusual,  
12 Mr. Cornford is a very practical man. A lot of times, we have  
13 found that people quite often on various boards and commissions  
14 follow a particular ideological point of view and don't always  
15 think through what the consequences are going to be on a  
16 practical, day-in and day-out basis.

17 Mr. Cornford has worked with employers and employees,  
18 and his goal has always been to make the relationship work. And  
19 quite often, that requires that sometimes everybody has got to  
20 give something so that the end result is one that's practical  
21 and that will work for everybody, and that's another attribute  
22 that we particularly appreciated in Mr. Cornford.

23 We would whole-heartedly support his appointment to the  
24 Industrial Welfare Commission. He has been there now almost one  
25 year. He has been very diligent, very hard-working. I know  
26 personally that he takes his responsibilities at the IWC very,  
27 very seriously. I think he would be a tremendous asset to the  
28 Industrial Welfare Commission.



1 Thank you.

2 CHAIRMAN LOCKYER: Thank you very much.

3 Other comments.

4 If there are ever questions, please just interrupt.

5 Yes.

6 MS. BROYLES: Good afternoon, Mr. Chairman, Members.

7 I'm Julianne Broyles from the California Chamber of  
8 Commerce.

9 We also endorse Mr. Cornford's re-appointment to the  
10 Industrial Welfare Commission.

11 We also have enjoyed working with Mr. Cornford over the  
12 last eleven months in the Industrial Welfare Commission  
13 meetings. He has been always a member who has been present, has  
14 taken his duties very, very seriously as being a fair and equal  
15 listener to all sides. I can't think of any situation in the  
16 last eleven months where I have been present in the meetings  
17 where he hasn't gone out of his way to favor one side over  
18 another, and his balanced approach to all of this has been very,  
19 very refreshing.

20 We hope that Members of the Committee will look at his  
21 appointment as a member of the Industrial Welfare Commission  
22 favorably. We would like to continue to work with him, if it so  
23 pleases the Committee, and would like to urge your aye vote.

24 Thank you.

25 CHAIRMAN LOCKYER: Mr. Washington.

26 MR. WASHINGTON: Good afternoon, Mr. Chairman, Members.

27 Willie Washington with the California Manufacturers  
28 Association.

1 I think in the ten years that I've been here, this is  
2 the one issue that I've pursued the ten years that I have been  
3 working for the California Manufacturers Association. And as  
4 many of you know, I come from the employment area and worked as  
5 a professional in human resources for many, many years before I  
6 took on this job.

7 CHAIRMAN LOCKYER: What company were you with?

8 MR. WASHINGTON: I worked for Pittsburg-DesMoines  
9 Steel, both fabrication and construction.

10 Mr. Cornford is the first member that I've been able to  
11 support. He comes to this particular Commission with the type  
12 of background that is so very well suited for this type of  
13 work. And I've had a great deal of pleasure of having an  
14 opportunity to work with him since he was appointed some eleven  
15 months ago.

16 In addition to what you've heard already, that he is  
17 indeed a highly respected consultant who has worked both in the  
18 industry and then as consultant with the industry, I've also  
19 found Mr. Cornford to be a person who's very easy to talk with.

20 More importantly than just my talking with him is, in  
21 the last eleven months, I've attended every hearing that the  
22 Commission has conducted relative to the daily overtime issue.  
23 As you know, that is my number one priority, and I just wouldn't  
24 miss one of those hearings for nothing.

25 The fact of the matter is that these meetings have gone  
26 on rather long. I mean, they have been all day, going way beyond  
27 the time that they were advertised by the Commission. And to  
28 that I would say that the Commission members have been very,

1 very receptive to trying to take the testimony and listen to the  
2 individuals.

3 I've observed on several occasions where there were  
4 members there who were somewhat opposed to the mere fact that  
5 either daily overtime, or the minimum wage, any of those items  
6 were even being discussed, and were somewhat harsh in their  
7 criticism of the Commission. And I'm pleased to say that on  
8 each of these occasions, I've observed that Mr. Cornford has  
9 continued to treat those folks with very high respect and  
10 regard, and continued to keep an open ear to hear their  
11 concerns.

12 On many, many occasions when I've been there, there's  
13 been a considerable number of employer representatives there in  
14 support of some of these issues, and I'm certainly one of them,  
15 trying to get my members out to support the goal of trying to  
16 make some changes in California law that would accommodate some  
17 of the changes that we think is needed.

18 But on many occasions, labor are there in major, major  
19 numbers. And I have to say that to sit through these sessions  
20 all day, when some of the testimony becomes pretty redundant,  
21 I'm sure would remind you of some of the hearings you've sat  
22 through up here.

23 CHAIRMAN LOCKYER: Not this one yet.

24 MR. WASHINGTON: In any event, I've seen him do that.

25 And so, I would say that certainly Mr. Cornford is very  
26 well suited for that. I think he's been very fair and open with  
27 those folks who come before him, including will Willie  
28 Washington.



1           We would like very much to see him continue. We would  
2 like to see this job get done. It's been a long time coming,  
3 and we need to get a vote. We need to get this down here so  
4 that we can have a fair discussion and get these boards  
5 appointed so we can move on with it.

6           And I'd like to urge you to vote for the confirmation.

7           CHAIRMAN LOCKYER: Thank you. Were there other  
8 supporters that wanted to comments?

9           SENATOR PETRIS: May I ask a question.

10          Those long, long meetings are rather common that you  
11 referred to?

12          MR. WASHINGTON: It is when we have an issue, Senator  
13 Petris, where there is an issue that affects labor directly, as  
14 these issues do, and ones where the employer community is also  
15 affected, and of such importance as these are to us. And when I  
16 say "us", I'm speaking of the manufacturers.

17          SENATOR PETRIS: The Commissioners are paid a flat fee  
18 of \$100 dollars per meeting?

19          MR. WASHINGTON: My understanding is that \$100.

20          SENATOR PETRIS: Regardless of how long the meeting  
21 goes?

22          MR. WASHINGTON: That's correct, sir.

23          SENATOR PETRIS: There's no overtime pay?

24          MR. WASHINGTON: Not at all.

25          SENATOR PETRIS: Thank you.

26          SENATOR AYALA: On that point, Mr. Chairman.

27          With all the testimony that the gentleman's been  
28 exposed to, long hearings on the different issues, I was



1 surprised when he told me last week that he hadn't made up his  
2 mind on minimum wage.

3 How long does it take to make up someone's mind when it  
4 comes to minimum wage and the prevailing wages? I mean, after  
5 how many years you've been having these hearings, he still  
6 hasn't made of his mind, so I was a little bit surprised. He  
7 may be a good listener, but he doesn't act accordingly.

8 MR. WASHINGTON: Senator Ayala, was that addressed to  
9 me? I don't want to presume to speak for --

10 SENATOR AYALA: It was addressed at you because you're  
11 the one that brought up the fact that he sat down through  
12 hearings after hearings after hearings, and obviously they  
13 didn't take, because he wasn't sure what he was going to do with  
14 the minimum wage a week ago.

15 MR. WASHINGTON: Senator, I think that that goes along  
16 with the fact that this is my tenth year up here, and I'm still  
17 working on some of these issues. That this is a very, very  
18 laborious procedure.

19 The IWC, whether it's minimum wage or looking at daily  
20 overtime, the law requires so many hurdles be jumped over, i.e.,  
21 the notices that you have to give, the time that you have to  
22 bring people together. The information has to be gathered,  
23 sorted through. You have to draw some type of analysis with it.  
24 You have to write up something else, go back to the public.

25 The period of time that it takes to go through this  
26 process, regardless of whether it's daily overtime or minimum  
27 wage, is very, very lengthy. There's nothing that can be done  
28 with them in a very short period of time.

1 SENATOR AYALA: You've been ten years with the Chamber?

2 MR. WASHINGTON: With the Manufacturers Association.

3 SENATOR AYALA: Are you still making same amount you  
4 did ten years ago?

5 MR. WASHINGTON: No.

6 CHAIRMAN LOCKYER: Mr. Cornford, you know from the file  
7 that there is a rather substantial amount of opposition to  
8 confirmation brought by the labor community?

9 MR. CORNFORD: I've heard that, sir.

10 CHAIRMAN LOCKYER: Do you want to comment or offer any  
11 sort of explanation before we hear them? You can wait if you  
12 want to hear their comments, but what you think that's all  
13 about?

14 MR. CORNFORD: I would prefer to wait, if I might.

15 CHAIRMAN LOCKYER: Fine.

16 Comments from opponents?

17 MR. RANKIN: Good afternoon, Mr. Chairman, Senators.  
18 Tom Rankin with the California Labor Federation.

19 A little background, since Mr. Cornford gave you a  
20 little. I'd like to give you a little from our perspective.

21 In 1914, when Hiram Johnson was the progressive  
22 Governor of California, the Constitution of California was  
23 amended to give the Legislature authority to deal with minimum  
24 wages for women and minors, and to deal with the comfort,  
25 safety, and health of all workers, and general welfare of all  
26 workers.

27 Then it also said that the Legislature could delegate  
28 these responsibilities to a commission. And it did and set up

1 the Industrial Welfare Commission.

2 And the Commission is made up of five members: two  
3 labor, two employers, and one public member. The idea was that  
4 this body would somehow balance each other off and would carry  
5 out the duty that the Legislature -- that the Constitution gave  
6 the Legislature to protect the interests of the employees. It  
7 was meant as a protective body for employees.

8 Well, what's happened, unfortunately, in recent years,  
9 it's become a threat to employees. It's become a body that  
10 attacks employee rights in terms of hours and working  
11 conditions, and does nothing on the minimum wage, even though  
12 its duty is to provide for a minimum wage that is adequate to  
13 give people the necessary cost of proper living. It hasn't  
14 acted since 1987 in that manner.

15 Also, in terms of hours and working conditions, its  
16 duty is to make sure that those hours and working conditions  
17 that exist are not prejudicial to the health and welfare of  
18 employees. Those are in statute.

19 So, what's happened recently is, as I said, it's become  
20 an attack dog on workers. And what we have on the Commission  
21 now that's appointed by the Governor are two employer members,  
22 both of whom are closely connected with industries that tend to  
23 lose the most with an increase in the minimum wage --  
24 agriculture and the hotel and restaurant industry, a public  
25 member from academia, and two labor members who have no  
26 connection with minimum wage employees at all, one from the  
27 building trades, and one from the public sector, a recent  
28 appointee who's a state engineer. Neither the construction



1 trades nor the public sector are even covered by the Industrial  
2 Welfare Commission. So, what you have is a totally unbalanced  
3 IWC in terms of representation.

4 In terms of employer representatives, we expect them to  
5 come with a certain perspective, of course, as we do labor  
6 people. But we also expect them to comply with the mandates of  
7 the law, the extraordinary mandates.

8 Mr. Cornford, before he was appointed Commissioner, sat  
9 on one of these minimum wage boards in 1993. He was the most  
10 vocal spokesman for the employers against an increase in the  
11 minimum wage in 1993 on that wage board, and as a matter of  
12 fact, he made a motion that the state should never have an  
13 increase in the minimum wage above the federal.

14 In that case, why have the IWC? There's no point in it  
15 if all we're going to do is have the same minimum wages as is  
16 mandated by Congress.

17 He used the time-worn argument that it was going to be  
18 bad for competitiveness of the State of California, that people  
19 are going to lose jobs. These arguments have been disproven by  
20 several economic studies.

21 And his posture in the hearings that the IWC recently  
22 had, before it set up the Wage Board on the minimum wage, didn't  
23 show any change from that. There was no indication of any  
24 sympathy on his part towards increasing the minimum wage as a  
25 Commissioner.

26 I might add that he neglected to mention to you that  
27 this Wage Board that was set up deadlocked, as all the Wage  
28 Boards have done in the last several years except one in



1 manufacturing that had to do with hours, and I want to talk  
2 about that in a minute. So, if the Wage Board's deadlocked,  
3 it's thrown back to the IWC to make a decision.

4 He also indicated his hostility to the interests of  
5 working people in another vote which he didn't mention, which  
6 was a vote on an issue to eliminate the IWC requirement that  
7 workers employed in the almond processing industry, where they  
8 work 12-hour days, not have a mandatory day off once a week. In  
9 other words, he thinks it's fine that people work 84 hours in a  
10 row without a day off.

11 He voted, to be sure, to establish a Wage Board for the  
12 minimum wage. He also voted to establish a Wage Board, which he  
13 mentioned covers only five wage orders. Those wage orders cover  
14 the bulk of the employees in the state of California, those five  
15 wage orders that he mentioned, where the goal of the Governor is  
16 to eliminate daily overtime. And he has told that to the public  
17 and to the IWC.

18 Going back to the manufacturing wage order, that was  
19 one instance in all the years that I've followed the IWC, which  
20 are considerably more than ten, where the labor members of the  
21 Wage Board and the employer members reached an agreement,  
22 unanimous. They all agreed that, in addition to the ten-hour  
23 day that was allowed by the wage orders, that employers could  
24 work out other combinations under ten hours. For instance, four  
25 9-hour days and a 4-hour day. That was agreed on unanimously by  
26 the representatives on the Wage Board, adopted by the IWC. Now,  
27 of course, the Governor wants to undo that.

28 It was also not mentioned by Mr. Cornford that the IWC

1 has already acted in four instances to allow 12-hour days in  
2 California without overtime. To be sure, where they could do  
3 12-hour days and 10-hour days, there are procedures that have to  
4 be followed and employees have to vote on whether or not they  
5 want that increased work week.

6 We don't even think those procedures are very  
7 protective, because the employer runs the election, the employer  
8 can meet with the employees. It's not a very fair procedure,  
9 but anyway, there is some protection.

10 What the Governor clearly wants to do is to get rid of  
11 this altogether and to go with a 40-hour week. In other words,  
12 to do away with daily overtime altogether.

13 In summary, we have had no indication that Mr. Cornford  
14 has changed his position since he was on that Wage Board, on the  
15 Minimum Wage Board. No indication that he can transcend the  
16 role as a pure employer representative, and comply with the  
17 statutory mandates, and give people a long overdue increase in  
18 the minimum wage, and protect workers who want and need their  
19 daily overtime.

20 The daily overtime issue simply involves, if they do  
21 away with daily overtime, it's simply a transfer millions and  
22 millions of dollars from the pockets of employees to the pockets  
23 of employers. It has nothing to do with flexibility.

24 CHAIRMAN LOCKYER: Okay, thank you. Questions.

25 Are there others who wish to comment?

26 SENATOR PETRIS: I have a question.

27 If what you consider appropriate action had been taken  
28 on the minimum wage over the years, I understand the current

1 amount would be seven dollars and something?

2 MR. RANKIN: Over seven dollars, yes.

3 SENATOR PETRIS: Over seven dollars an hour?

4 MR. RANKIN: Part of the problem is that the Industrial  
5 Welfare Commission has simply been a tool of the employers in  
6 the amount of the minimum wage. Had it increased the minimum  
7 wage gradually every year to keep up with inflation, we wouldn't  
8 be in the same position we are now. Now, to get it up there,  
9 and you know we're sponsoring an initiative only to bring it to  
10 5.75 in two years, because it would simply be too big a shock to  
11 go to 7.25, or whatever it should be.

12 But if they had taken their responsibilities seriously,  
13 instead of just being the voice of the employers, and raised it  
14 gradually every year, the employers would be a lot better off  
15 and the workers would be a lot better off. But they've chosen  
16 not to do and to become simply a mouthpiece for the employers.

17 SENATOR PETRIS: May I ask Mr. Cornford, does this  
18 mean that you and a majority of the Board members just don't  
19 want to raise it, period, since it hasn't been addressed for a  
20 long time?

21 MR. CORNFORD: No.

22 SENATOR PETRIS: Does it mean that you think that the  
23 current amount is adequate?

24 MR. CORNFORD: No. I voted, Senator, that the minimum  
25 wage may not be adequate, and that's why we referred it to a  
26 Minimum Wage Board.

27 SENATOR PETRIS: What's the status of that now?

28 MR. CORNFORD: We're waiting for the report to come



1 back from the Minimum Wage Board.

2 SENATOR PETRIS: That'll be a recommendation to you, I  
3 suppose?

4 MR. CORNFORD: It will be a series of votes on various  
5 issues relative to the minimum wage, yes.

6 SENATOR PETRIS: But it has no effect unless the IWC  
7 adopts it?

8 MR. CORNFORD: That is correct, unless it's two-thirds.

9 SENATOR PETRIS: How many are on that?

10 MR. CORNFORD: On which.

11 SENATOR PETRIS: On the IWC?

12 MR. CORNFORD: Five. There are two labor appointees --

13 SENATOR PETRIS: Two from each side?

14 MR. CORNFORD: And the public member.

15 SENATOR PETRIS: Thank you.

16 SENATOR BEVERLY: May I clarify something?

17 The only vote you cast on minimum wage is the vote to  
18 refer it to the Wage Board?

19 MR. CORNFORD: That is correct; it's the only vote.

20 CHAIRMAN LOCKYER: Reference was made to prior service  
21 on a previously ordered wage study --

22 MR. CORNFORD: Right.

23 CHAIRMAN LOCKYER: -- of minimum wage. I guess you  
24 were representing hotel employers?

25 MR. CORNFORD: I was representing various employers.  
26 There were ten people on the employers' side, and I was one of  
27 those ten.

28 It is quite correct that I did offer certain motions as



1 an advocate for the employer community at that time.

2 I wish to draw a distinction, however, between the  
3 service on the Commission, which I think may well have a higher  
4 standard than being an advocate on a Minimum Wage Board.  
5 Certainly Mr. Rankin knows that. He was an advocate on the  
6 other side of the table, and he took some opposing positions.  
7 Unfortunately, we weren't able to view the matter in the same  
8 light.

9 CHAIRMAN LOCKYER: You mentioned early in your comment  
10 that you certainly don't consider yourself a rubber stamp of the  
11 administration or their points of view.

12 I would think almost everyone would feel that way.  
13 What's the point of having developed some expertise if you're  
14 not entitled to your own view?

15 Can you point to any issues that have come up during  
16 your tenure on the Board that you would say indicate a vote that  
17 might be at odds with the general philosophy of the  
18 administration?

19 MR. CORNFORD: Well, let me address it this way, if I  
20 can. It is my independence, I think, that is really at issue  
21 here. And I did comment that I don't feel I'm a rubber stamp.

22 It may well be, and I don't know the mind of the  
23 Governor on this, but it may well be that the Governor would  
24 just as soon not have this issue of minimum wage go to a Wage  
25 Board, but I voted, along with the other members, and it was  
26 unanimous. The labor member, there was one vacant seat, and the  
27 public also voted for that.

28 CHAIRMAN LOCKYER: What we've seen in the past is, it

1 was a device to just stall. And so, it was a way to postpone,  
2 and then, when the Wage Board came back and even suggested some  
3 increases, it was turned down.

4 MR. CORNFORD: With all due respect, Senator, I would  
5 respectfully disagree. I did not view it as a stalling tactic.  
6 I have felt it was an essential part of the process in getting  
7 all the available information back before the Commission.

8 In fact, I personally believe that the Commission would  
9 have been subject to criticism if it had not called a Wage  
10 Board.

11 CHAIRMAN LOCKYER: I don't think I can disagree with  
12 that. It's just the weight given to their recommendations seems  
13 sometimes to not be too persuasive.

14 No other issues that come to mind?

15 MR. CORNFORD: The other, it's obviously this issue of  
16 the overtime issue. And one of the things --

17 CHAIRMAN LOCKYER: You mean scaling down fifteen to  
18 five?

19 MR. CORNFORD: I have to tell you, the reason why I  
20 voted to open five of the wage orders is that there was an awful  
21 lot of testimony presented from employees who said, "Under the  
22 current rules, we are -- our lives are negatively impacted."  
23 We don't have, even though Mr. Rankin may disagree and wish to  
24 negate it, is that they wish to have more flexibility. Let me  
25 give you an example.

26 An employee wishes to take a couple of hours off one  
27 day and add it to the next day. Can't very well do it without  
28 the payment of overtime. And employees in large numbers

1 supported the flexibility.

2 One of the things that I did say when we were  
3 deliberating on this issue, I said, "We have got to be creative  
4 in this state. We are not in a situation any longer where one  
5 rule fits all employees in the state. We're too diverse, we're  
6 too complex."

7 I have advocated, and will continue to advocate on the  
8 charge to the Wage Board, that these Wage Boards be creative.  
9 Now, creative in terms of allowing flexibility to come up with  
10 some new approaches, but also in terms of -- and if you'll read  
11 the minutes -- protection for the employees. I believe that  
12 protection is an absolute necessity, to make sure that no one is  
13 taken advantage of. I strongly believe that.

14 CHAIRMAN LOCKYER: No day off for almond processing?

15 MR. CORNFORD: I did not sit in on every hearing of  
16 that because the way the appointment fell, but I came in for a  
17 couple of hearings.

18 My understanding from the testimony is that there were  
19 employees who wanted this opportunity to work an additional day,  
20 or seven days, because of the short seasonal nature of this  
21 industry. They have to do it when the product is there,  
22 otherwise it spoils. So, they wanted to. They wanted to  
23 maximize their earnings during a short period of time.

24 Secondly, it is voluntary. There is no force that is  
25 going to be exercised. I was convinced of that. And I tell you  
26 why I felt that way.

27 More than one employer said there is a shortage of  
28 qualified employees to do this work. It's highly specialized,



1 and there's not very many people who can transfer their skills  
2 to this kind of process. We're not going to abuse our  
3 employees.

4 I have to give some faith and credit to the employers  
5 that said that. I did not hear any testimony from employees  
6 saying that they had been abused, or somehow forced to do  
7 something that they did not wish to do.

8 CHAIRMAN LOCKYER: What is the current process? What's  
9 the law with respect to employees assenting to a change in  
10 scheduling? How does that work?

11 MR. CORNFORD: It would have to be, in this situation,  
12 it would have to be by written authorization that can be  
13 revoked.

14 CHAIRMAN LOCKYER: No, I'm sorry. Just as a general  
15 matter, there's some way in which employees can work with the  
16 employer and vote, or something, to have a change in hours.  
17 What are the details?

18 MR. CORNFORD: For example, right now in a particular  
19 work unit, the employees have to, by a two-thirds vote, assent  
20 to changing their work schedule.

21 CHAIRMAN LOCKYER: So it would be a unit? It couldn't  
22 be the whole company?

23 MR. CORNFORD: It depends on how you define this  
24 particular work unit.

25 But what is interesting, Senator, is that if that  
26 employer were subject to a collective bargaining agreement, you  
27 can, by a simple majority, change the work schedule of  
28 employees. So, it seems as if the playing field is slightly not



1 equal in this situation. Where, in a nonunion situation, you  
2 have to have two-thirds; in a union situation, it's a majority  
3 of whoever votes.

4 I'm sure Mr. Rankin knows --

5 MR. RANKIN: And union --

6 MR. CORNFORD: If I might.

7 It's that not all 100 percent of employees always vote  
8 in elections.

9 CHAIRMAN LOCKYER: Two-thirds of all employees?

10 MR. CORNFORD: Two-thirds of all the employees.

11 CHAIRMAN LOCKYER: Not just two-thirds of those voting?

12 MR. CORNFORD: That is my understanding.

13 CHAIRMAN LOCKYER: Plus whatever the unions, okay.

14 MR. RANKIN: The employer sets, determines the unit  
15 that votes. They can say, "These five people over here are a  
16 unit. They get to vote."

17 The employer holds the election and counts the  
18 ballots. And that is a fair election? Don't compare that to  
19 union situations.

20 CHAIRMAN LOCKYER: Well, a two-thirds vote, is that a  
21 correct representation?

22 MR. RANKIN: Two-thirds vote.

23 CHAIRMAN LOCKYER: I guess maybe the difference is  
24 meant to be an inducement to organize, if people want to, to  
25 find ways around those two-thirds vote requirements.

26 Any other questions for Mr. Rankin or Mr. Cornford?

27 SENATOR PETRIS: Just Mr. Cornford.

28 I'm trying to get a handle on just how you see this

1 mission that you're in. We often ask people if they've read the  
2 statute to know what your charge is.

3 I guess you've done that?

4 MR. CORNFORD: Yes, sir.

5 SENATOR PETRIS: Under the IWC, their duties include  
6 ensuring, this is a direct quote, "fair treatment of employees,  
7 especially the working poor, and fair conditions of competition  
8 for employers who treat their employees humanely."

9 There's a side benefit to that, in that it's for  
10 society as a whole.

11 MR. CORNFORD: Right.

12 SENATOR PETRIS: If people are paid better, you know,  
13 they live better, they're less likely to go on the public  
14 assistance rolls, and so forth.

15 I remember when I first got interested in the plight of  
16 farmworkers a long time ago, we had a report from the  
17 Legislative Analyst's Office that checks out things for the  
18 Legislature, and the one that really sticks in my mind, the  
19 Analyst started one report by saying, "If you want to get hurt  
20 on the job, or you want to get sick on the job because of the  
21 conditions there, be a farmworker."

22 And that actually triggered my interest in pesticides,  
23 and I've carried legislation on that.

24 And I see here some information given us, a survey by  
25 the National Institute of Occupational Safety and Health, there  
26 were 210,594 lost work days in '93 due to disabling  
27 injuries. There's not any detail behind that, but it does say  
28 that prominent among the occupational illnesses and injuries

1 suffered by farmworkers are the hundreds of pesticide poisonings  
2 that occur each year.

3 And your group, were you on it in September of last  
4 year?

5 MR. CORNFORD: Yes, sir.

6 SENATOR PETRIS: They had a meeting in Fresno to have  
7 some testimony on that problem. And there was an exchange  
8 reported here between one of the labor representatives that was  
9 kind of dramatic.

10 I'm wondering what your understanding now is of the  
11 difficulties of being a farmworker in California, particularly  
12 in some fields, some areas, and whether you have any ideas for  
13 improving the plight of the farmworkers' conditions?

14 MR. CORNFORD: That issue hasn't come -- the plight of  
15 the farmworker in the sense that you're describing it, has not  
16 come before the Industrial Welfare Commission. It's probably  
17 more properly before the Occupational Safety and Health group.

18 But, Senator, I'm concerned about any employee in the  
19 State of California and about their welfare. Farm work is hard  
20 labor, no doubt about it.

21 SENATOR PETRIS: I don't think they complain so much  
22 about the hard labor as they do about the conditions surrounding  
23 the work. We all know that what they call "stoop labor" is very  
24 hard, especially in certain parts of the year, depending on the  
25 climate and so forth.

26 There was an exchange between you and Mr. Perez,  
27 representing the farmworkers, who says that, "We, the  
28 farmworkers, many times feel we're treated as animals, no



1 dignity, and worth nothing. And we're the ones that raise the  
2 crops and the raisins. Daily we eat dirt. We finish working 10  
3 hours. We end up spitting dirt just to win a minimum wage."

4 I encountered statements like that a long, long time  
5 ago when I first got into this field. Here we have Mr. Perez in  
6 September of last year repeating the same complaints, and he  
7 goes on to point out that all he's seeking is justice for all.  
8 They don't see the justice of where they live or where they  
9 work.

10 I remember one of the hearings that we had when I was  
11 more active in San Diego County, not far from the city. The  
12 farmworkers were living in holes in the ground. I don't know  
13 why it would have to take a public hearing by a legislative body  
14 to investigate that and ask the employer, "What the in the world  
15 are you doing here? What possible justification can you have?"

16 They'd pull a corrugated tin slab over the hole.  
17 That's where they lived.

18 Now, fortunately, that's not a common practice  
19 throughout the state, but to encounter it even in one area on  
20 one farm or two in the area, to me, was very, very shocking, and  
21 I found it very repulsive.

22 So, that's why, you know, some of us are concerned  
23 because farmworkers have had a very bad history in this state in  
24 their treatment. I know they've improved it a lot, but I'm told  
25 they still have a long way to go.

26 Are you being apprised of these kind of conditions in  
27 your capacity on the Welfare Commission when you make decisions  
28 on wages, and hours, and so forth?



1 MR. CORNFORD: With regards to the farmworkers,  
2 Senator?

3 SENATOR PETRIS: Yes.

4 MR. CORNFORD: We have received, as you mentioned,  
5 certain comments by various representatives from the  
6 farmworkers, particularly when we were in San Diego. We had a  
7 large number, and we had in Fresno also, yes.

8 SENATOR PETRIS: What's your reaction?

9 MR. CORNFORD: I think it's a travesty that any person  
10 would have to live in a hole in the ground or live in sub-human  
11 conditions. I would not tolerate that.

12 SENATOR PETRIS: Hopefully, it isn't happening now, but  
13 it was at the time I was looking into it.

14 Well, suppose it came to your attention. What would  
15 you do? Suppose it were happening now.

16 MR. CORNFORD: If it came to my attention as a member  
17 properly before the Industrial Welfare Commission, I would  
18 believe that then we have an obligation to conduct an  
19 investigation as to the validity of those comments.

20 SENATOR PETRIS: And if they were valid?

21 MR. CORNFORD: We would have to act accordingly to try  
22 to eliminate that type of situation, if it is properly within  
23 the purview of the Industrial Welfare Commission.

24 SENATOR PETRIS: Do you know whether it is or not, or  
25 do you only look at wages?

26 MR. CORNFORD: No, there's other conditions of  
27 employment, but some of those are pre-empted by other statutes.

28 SENATOR PETRIS: This statement is a little bit

lengthy, but I mentioned justice, they were looking for justice, and the labor representative says, "We don't see justice where I live, where I work. Sometimes they don't even give us water. We do the work because necessity dictates what we have to do."

It seems to me that would be enough reason to go in there and demand an explanation from whoever's responsible for that.

I heard that same complaint a long time ago. I just have a bad taste in my mouth for the attitude that employers have, some employers, in some parts of the state.

It took me many, many years to get my first farm labor bill passed. And when it passed, I wasn't even the author anymore. Someone else picked it up. And that was a bill that required posting in the fields after they were sprayed with poison. If you spray the field with poison, people around don't know. Employees, in particular, are not informed as to the nature of the poison. So I said, "Post a notice and explain the clearing time. This field has been sprayed with poison on such-and-such a day and time. No admission until the clearing time is passed, such-and-such a time later today, or tomorrow, or the next day." Most of them passed within a few hours, or certainly two or three days.

The chemical companies and the growers fought against that as if I had a bill to nationalize the industry and take everything away from them. I couldn't believe how tenacious they were in their opposition. Some of them viewed it as, well, it's the opening salvo, and it's the camel under the tent thing, who knows what he's going to do next.

1 I was a city boy, and I found these kind of conditions  
2 equal to Medieval days.

3 So now, today, if I get even a small complaint, it  
4 still bothers me. I'm wondering to what extent you're made  
5 aware of these things, and to what extent the Commissioners go  
6 out and visit some of the properties to see what the conditions  
7 are?

8 MR. CORNFORD: The comments that were made by Mr.  
9 Perez, I believe, were in the context of the minimum wage  
10 hearings, as I recall. Certainly, Mr. Perez may well have some  
11 valid points, and I do think that that needs to be further  
12 investigated.

13 The fact that we haven't done anything probably is --  
14 or I have not done anything is strictly a factor that we've been  
15 involved in the minimum wage and the overtime issues, and have  
16 not had time to get into some of these other areas.

17 SENATOR PETRIS: Do you have staff?

18 MR. CORNFORD: No, sir, I don't.

19 SENATOR PETRIS: Does the Commission itself have staff?

20 MR. CORNFORD: The Commission has a very limited staff  
21 of, I think, three people.

22 SENATOR PETRIS: Is it kept that way on purpose?

23 MR. CORNFORD: I don't know, sir.

24 SENATOR PETRIS: Have you ever asked for more staff?

25 MR. CORNFORD: I'm too new to the Commission at this  
26 point in time to understand all of the ramifications of the  
27 budgeting process here in Sacramento.

28 But do we need additional staff? Yes, sir, we do.



1           SENATOR PETRIS: If you had additional staff, how would  
2 you use them?

3           MR. CORNFORD: I think that comments such as Mr. Perez  
4 makes would make sufficient fodder to go out and look.

5           SENATOR PETRIS: Investigate the conditions --

6           MR. CORNFORD: Yes, sir.

7           SENATOR PETRIS: -- in the fields?

8           MR. CORNFORD: Absolutely.

9           SENATOR PETRIS: Well, did you have reason to  
10 disbelieve Mr. Perez when he made that statement?

11          MR. CORNFORD: I'm not an expert in agriculture. The  
12 Chairperson of the Commission is an agricultural expert. And as  
13 I recall, she was concerned about the comments, and she talked  
14 from her own personal experience about her own employees, and  
15 how they do care about their staff and their employees.

16          But that if people -- as I recall, if people were  
17 violating the laws, then they should be prosecuted.

18          CHAIRMAN LOCKYER: Let me give you, if I may, just  
19 another example, not meaning to prolong this debate, but it goes  
20 back to early years.

21          I was conducting a hearing in Fresno. There were, I  
22 would think, maybe a couple hundred growers and others in the  
23 hearing room. One of the gentlemen got up and said, "Hey, we  
24 used to be able to kill these bastards. Now we can't even fire  
25 them," in front of a room full of people who thought it was  
26 pretty funny.

27          MR. CORNFORD: I don't think that's funny.

28          CHAIRMAN LOCKYER: I'm not suggesting that you're



1 countenancing that attitude at all, but it just shows something  
2 about the sort of semi-feudal tradition that we've allowed in  
3 this state.

4 MR. CORNFORD: Hopefully, that's changing.

5 CHAIRMAN LOCKYER: It is changing. There's no doubt  
6 about that.

7 Are there other questions? Yes, Senator Ayala.

8 SENATOR AYALA: Tell me again the process for  
9 considering a wage change, minimum wage. How did that go from  
10 your committee.

11 MR. CORNFORD: I'm sorry, the Commission voted  
12 unanimously to call for a Wage Board.

13 SENATOR AYALA: For a minimum wage?

14 MR. CORNFORD: To study further the issue of a minimum  
15 wage increase.

16 SENATOR AYALA: Why is it so difficult? Here are  
17 people who haven't had a raise in eight years. There's no one  
18 in this room that hasn't had a raise in eight years. Their cost  
19 of living's gone up.

20 What does it take, a rocket scientist to come up with a  
21 conclusion of that? Why couldn't you people do it right there  
22 in the Commission?

23 MR. CORNFORD: Again, Senator, as I stated earlier to  
24 you, Chairman Lockyer, I think the Commission would have been  
25 severely criticized if we had not called a Wage Board.

26 SENATOR AYALA: By whom?

27 MR. CORNFORD: I think the general public could  
28 criticize us.

1           SENATOR AYALA: I disagree with that.

2           How can you tell me that someone who's making \$4.25 an  
3 hour, haven't had a raise in eight years, the cost of living's  
4 going up, and yet, you put it to a commission to study it? Why  
5 does it take -- it's not that complicated.

6           MR. CORNFORD: Again, Senator as I understand it, it is  
7 written into the process. It is part of the procedure that if,  
8 in fact, the Commission feels that the minimum wage may not be  
9 adequate, we call for a Wage Board.

10          SENATOR AYALA: You can't act on your own?

11          MR. CORNFORD: As I understand it, before we act on our  
12 own, we need to call a Wage Board. That is my understanding,  
13 Senator.

14          CHAIRMAN LOCKYER: Are there others that wish to  
15 comment?

16          MR. WATSON: My name is Don Watson. I'm representing  
17 the International Longshoremen's and Warehousemen's Union.

18          In recent years, we have been pretty down on the kind  
19 of trend that is coming to the Industrial Welfare Commission,  
20 which we've always seen as having a primary job of protecting  
21 working people. And I think that some of the purposes have been  
22 lost.

23          We in the ILWU have been involved in trying to organize  
24 nut workers. We've had activity down in the Valley, and so  
25 we're familiar with -- the nut growers have been for the last,  
26 well, for about a decade, every year they have said that they  
27 wanted a special exemption. And so, year in and year out,  
28 they've gotten the exemption from the overtime rules so they can

1 work the workers 84 hours a week.

2 And so, and actually getting these exemptions was to  
3 only be, like, temporary until something could be worked out,  
4 some kind of a formula could be worked out. But then, the IWC  
5 decided to make this whole thing permanent.

6 As far as the workers, whether they want to do this,  
7 it's a fact that they're nonunion workers, and that they're  
8 immigrant workers. And they're just not in a position to give a  
9 real genuine assent because many of them are just afraid of  
10 their jobs.

11 So, we found in other -- we could see that in other  
12 industries that are peak season industries that are organized by  
13 the Teamsters, that they're able to give -- they don't have to  
14 work them 84 hours. So, there's no reason for that. But that  
15 is just one example of what the IWC has been doing.

16 So, we look askance at any nominee that comes in that  
17 continues the same kind of trend of the IWC.

18 CHAIRMAN LOCKYER: Have we heard from everyone that  
19 wants to make any comment at all?

20 I'd like to recommend that we not take a vote today and  
21 have a chance for some discussion and thought, and I think we're  
22 getting close to the deadline, the 17th of July. If that's  
23 agreeable with Members, to give it a little time to marinate.

24 Thank you, Mr. Cornford. Did you want to add anything?

25 MR. CORNFORD: No, sir. I appreciate the opportunity  
26 to appear before you, and thank you for your courtesy.

27 CHAIRMAN LOCKYER: I think your answers have been  
28 direct and forthright, and we appreciate it.



1 MR. CORNFORD: Thank you, sir --

2 CHAIRMAN LOCKYER: Let me jump to Item Number Seven,  
3 if we could.

4 [Thereupon the Rules Committee acted  
5 on legislative agenda items.]

6 CHAIRMAN LOCKYER: Our next person is Ms. Laethem.  
7 Good afternoon.

8 MS. LAETHEM: Good afternoon, Senator Lockyer,  
9 Committee Members.

10 CHAIRMAN LOCKYER: Do you want to start with my comment  
11 about what you do?

12 MS. LAETHEM: Very briefly, I'm not sure if I want to  
13 comment about necessarily what we do.

14 I would like to thank you for the privilege of being  
15 able to serve the State of California as California's Public  
16 Defender for the last seven years. And I would like to ask that  
17 I be given the opportunity to continue to serve in this capacity  
18 for the next term.

19 I'm very proud of the work that we've done over the  
20 last seven years. I'm proud of the aggressive representation  
21 we've provided our clients, the professional representation, the  
22 the ethical representation.

23 I'm equally proud of the fact that we've remained  
24 cognizant that this is a state agency funded by taxpayer  
25 dollars.

26 I think we've come a long way in this agency, and I  
27 hope to be able to continue to take the agency even further.

28 CHAIRMAN LOCKYER: Have you had any kind of difficult



1 issues during your tenure there that we ought to learn from you  
2 about?

3 MS. LAETHEM: I think capital representation is a  
4 difficult issue in and of itself. I think that finding  
5 qualified attorneys to represent our clients is a difficult  
6 issue. It's complex. It's emotionally draining. This agency  
7 has now gone through our -- a client who was executed, the first  
8 time that's happened, and it was -- it's a very emotional and  
9 difficult thing to deal with when you've been representing  
10 somebody for a number of years.

11 I was proud of the attorneys in the agency. I was  
12 proud of the way we handled the case and the way that we  
13 responded.

14 CHAIRMAN LOCKYER: Still having a shortage of people  
15 available to take on cases?

16 MS. LAETHEM: There is, and, hopefully, that will be  
17 some recommendation ideas for resolving that in the very near  
18 future.

19 CHAIRMAN LOCKYER: Do you assist the private  
20 court-appointed counsel in some manner? Or, are they just on  
21 their own?

22 MS. LAETHEM: They're assisted by the California  
23 Appellate Project, whose funding has now -- all of the resource  
24 centers throughout the United States have been defunded by the  
25 federal government.

26 In California, the Appellate Project still receives  
27 state funding, so they have managed to stay in existence, and  
28 they do provide assistance to private attorneys that are

1 handling these cases.

2 CHAIRMAN LOCKYER: I guess there's the suggestion that  
3 there be a habeas corpus and a direct appeal unit. Could you  
4 explain that issue to us?

5 MS. LAETHEM: Over the years, the backlog of  
6 unrepresented inmates has built up, and there have been  
7 different ideas to handle this. We used private counsel, civil  
8 law firms. Most of these have been band-aids, and we do have  
9 128 people on Death Row currently unrepresented.

10 There are some very creative and interesting proposals  
11 to systemically handle this problem. And I believe that, in a  
12 very short time, one of these proposals will be brought to your  
13 attention.

14 I believe personally that there is no silver bullet.  
15 It's a real complex issue. However, when you have a death  
16 penalty case, it's truly not just one case. There is the  
17 appellate part of it, and there is the habeas part of it. The  
18 case then moves on to federal court.

19 And I believe that, were the case divided differently,  
20 instead of having attorneys handle the appellate and habe [sic.]  
21 side, move on to separate federal counsel, if it was divided so  
22 all of the habe was handled by one set of counsel and the appeal  
23 by another set of counsel, it might provide, certainly, I  
24 believe, more time-effective representation, more cohesive  
25 representation, and would benefit all parties.

26 CHAIRMAN LOCKYER: Even if it is the same number of  
27 attorneys you're dividing up? Is there some expertise  
28 associated with one?

1 MS. LAETHEM: Yes, sir. There is a very different  
2 expertise associated with the appeals than with the habe. And  
3 that's been a big problem, because attorneys that have been  
4 trained in the appellate process were then being asked to take  
5 on what amounts to a trial attorney function with no training.

6 And so, you're exactly right. That's where the problem  
7 lies. I'm hoping that, perhaps, there may be a solution that  
8 will help us in that area.

9 CHAIRMAN LOCKYER: Other questions?

10 SENATOR PETRIS: I have a question on the habeas  
11 corpus.

12 Congress is considering legislation now to reduce in  
13 the federal courts the number of cracks that the defendant can  
14 get at the procedure.

15 How would that impact the work in your office if that  
16 were to pass?

17 MS. LAETHEM: Well, Senator Petris, I believe that at  
18 this point it has passed, although, as you're aware, it's being  
19 held up because there are courts that are now ruling on whether  
20 or not California complies with some of the provisions of this  
21 legislation.

22 We don't do the federal habe, although there would be  
23 some impact on us because we are in a position of having to  
24 federalize issues, knowing that the case will move on.

25 That could be another big advantage if we divided this  
26 work differently, because if there was one group of counsel  
27 doing both the state and the federal habe, they'd be able to  
28 provide a cohesive type of representation, where, from the



1     outset, they'd be thinking both at the state level and the  
2     federal level. It would, I think, blunt some of the problems  
3     inherent from the defense standpoint, while not in any way  
4     hurting what the federal legislation is trying to implement.

5             CHAIRMAN LOCKYER: Senator Ayala.

6             SENATOR AYALA: I have a piece of legislation, it's  
7     over in the Assembly now, that calls for a person who utilizes  
8     the Public Defender's Office, if they can afford it, to pay \$25.

9             Do you have any problem with that approach?

10            MS. LAETHEM: From the standpoint of the State Public  
11     Defender, that would not, I think, probably affect us. I  
12     believe your legislation goes to county public defenders.

13            SENATOR AYALA: Should I include the State Public  
14     Defender, too?

15            MS. LAETHEM: We have a limited number of clients.

16            I personally believe that when people -- there are  
17     large groups of people that cannot afford counsel, and yet do  
18     have, you know, some means of paying some amount. And some of  
19     them would probably be grateful to pay some amount. They're not  
20     looking for a hand-out. They simply can't afford the type of  
21     fees that private attorneys charge them.

22            I believe that the law currently is that the courts are  
23     supposed to inquire. And if, in fact, they find there is some  
24     means of making small payments, that should be ordered.

25            As far as I know, all counties are entirely different  
26     in enforcing that, and looking into it, or even dealing with it  
27     because collection is such a problem.

28            SENATOR AYALA: I notice that you have State Public



1 Defender Offices in Sacramento and San Francisco. You don't  
2 have any core of defendants in Southern California?

3 MS. LAETHEM: We do, but all of our clients are on  
4 Death Row. They're all at San Quentin.

5 What we do is represent Death row inmates, so all of  
6 our clients are in the Bay Area.

7 SENATOR AYALA: You don't have any of those folks down  
8 in Southern California?

9 MS. LAETHEM: We have clients that come from Southern  
10 California, but we do not do anything other than death penalty  
11 representation, so they're all in this area.

12 SENATOR AYALA: Thank you.

13 MS. LAETHEM: Thank you, Senator.

14 SENATOR BEVERLY: Any further questions.

15 Anybody here wish to appear on behalf of the nominee?  
16 Anybody here in opposition?

17 SENATOR AYALA: Move the confirmation.

18 SENATOR BEVERLY: Senator Ayala moves confirmation be  
19 recommended, call the roll.

20 SECRETARY WEBB: Senator Ayala.

21 SENATOR AYALA: Aye.

22 SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator  
23 Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Petris Aye. Senator Beverly.

26 SENATOR BEVERLY: Aye.

27 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

28 CHAIRMAN LOCKYER: Aye.

1 SECRETARY WEBB: Lockyer Aye. Four to zero.

2 SENATOR BEVERLY: Leave the roll open.

3 MS. LAETHEM: Thank you.

4 SENATOR BEVERLY: Congratulations.

5 MS. LAETHEM: Thank you.

6 SENATOR BEVERLY: Next in order is Mr. Stubchaer.

7 Senator O'Connell.

8 SENATOR O'CONNELL: Thank you, Mr. Chairman.

9 I just briefly want to introduce and lend my support to  
10 Jim Stubchaer, a long time friend of mine, about 15-16 years,  
11 lives in the Goleta area of Santa Barbara County. He was the  
12 Flood Control Director for Santa Barbara County for about 30  
13 years. Very, very active in our community.

14 He served for the last year on the statewide board, on  
15 the Regional Board for two terms prior to that. Has a  
16 background in civil engineering. Very well respected in our  
17 community. Has worked very, very hard on the statewide board,  
18 and wanted to lend my support to the reappointment of  
19 Mr. Stubchaer, a man, I think, this Committee is familiar with  
20 from his confirmation process four years ago.

21 Thank you, Mr. Chairman.

22 SENATOR BEVERLY: Thank you, Senator.

23 Would you care to make any kind of statement?

24 MR. STUBCHAER: Yes, Senator.

25 Thank you, Senator O'Connell and Senators. I think  
26 Senator O'Connell said about everything I was going to say, but  
27 I am Jim Stubchaer. I'm an engineer member of the State Water  
28 Resources Control Board.

1           As you know, we are a five-member board, and two us by  
2 law must be engineers. I was appointed to the Board in March of  
3 '92, and appeared before your Committee and was confirmed by the  
4 Senate. I was reappointed to a second four-year term this  
5 January.

6           Senator O'Connell mentioned my previous service on the  
7 Central Coast Regional Water Quality Board, and I also was a  
8 member of the Water Commission.

9           I have a bachelor's and a master's degree in civil  
10 engineering from USC, postgraduate diploma in hydraulic  
11 engineering from Delft Technological University in the  
12 Netherlands. Prior to being on this Board, I was an engineer in  
13 private practice, then I also managed the Santa Barbara County  
14 Flood Control District, Santa Barbara County Water Agency.

15           I think that concludes my summary of my qualifications  
16 for being a member of the State Water Board. I'll be pleased to  
17 try and answer any questions you may have.

18           SENATOR BEVERLY: Thank you.

19           Any questions of the nominee? Senator Ayala.

20           SENATOR AYALA: I want to ask him a question.

21           I was convinced that Southern Cal. would go around with  
22 canteens around their necks by the year 2010. I'm not so sure  
23 it's true anymore.

24           Can you give me an idea whether Southern Cal.'s really  
25 in great need of additional supplemental water or not?

26           MR. STUBCHAER: I can give you an idea. That's not an  
27 issue that's before this board.

28           The drought of the late 1980s instilled what you might



1 call a conservation ethic in water users of Southern  
2 California. And as a result, the per unit-per capita use of  
3 water has declined considerably.

4 In addition to that, the water districts and management  
5 agencies have improved their management of the supplies,  
6 planning better for droughts.

7 I don't think that the people of Southern California  
8 will have to be wearing canteens, but they'll still need to be  
9 frugal in their use of water.

10 SENATOR AYALA: The Board is in charge of all waters in  
11 California according to court ruling, including the Bay.

12 If you folks had standards for the Bay, quality  
13 standards, where would all that water come from to meet those  
14 standards.

15 MR. STUBCHAER: We have set water quality standards for  
16 the Bay-Delta.

17 SENATOR AYALA: For the Delta. I'm talking about the  
18 Bay.

19 MR. STUBCHAER: For the Bay itself.

20 Well, we've set them for the Bay-Delta complex, but  
21 that's primarily the Delta and not the Bay.

22 SENATOR AYALA: Nobody has any problem with the Delta.  
23 The Bay, which is almost at sea, what do we do with that salt  
24 water Bay?

25 MR. STUBCHAER: The San Francisco Bay water quality  
26 problems are not generally fresh water problems. They're toxic  
27 metals, and things like that, that are discharged into the Bay.  
28 The ocean tides dominate the waters in the Bay, as you know,



1 and so we don't have water quality standards for the Bay that  
2 would require fresh water.

3 SENATOR AYALA: But doesn't Porter-Cologne take care of  
4 the toxics in the Bay Area for water quality?

5 MR. STUBCHAER: It certainly addresses it, but there  
6 are still issues, such as Mercury, copper, things like that,  
7 that are present in relatively small quantities, and it's very  
8 difficult to get down to maybe five parts per billion in some of  
9 these constituents.

10 So, it's an ongoing issue about, how clean is clean  
11 enough? And the regional boards do have authority under  
12 Porter-Cologne, as you suggest, to have the required corrective  
13 actions taken.

14 SENATOR AYALA: But to improve the quality of the  
15 water in the Bay will necessitate a new source of water going in  
16 there.

17 Before the water in the state is adjudicated, where  
18 will that water come from?

19 MR. STUBCHAER: I'm not is sure that a new source of  
20 fresh water will be required for San Francisco Bay itself. As a  
21 matter of fact, there's some concern in the South Bay that the  
22 discharge from the sewage plants is making the water not salty  
23 enough, some of those salt marshes.

24 So, I don't think, as I said, that fresh water will be  
25 required for the Bay itself.

26 SENATOR AYALA: Thank you.

27 CHAIRMAN LOCKYER: The only thing I don't see, how do  
28 you pronounce this, Stoob-chair?

1 MR. STUBCHAER: Either way, Stoob-chair or Stub-chair.  
2 The Danish way was Stoob-Chair. When I was in the Army, they  
3 said, "It's Stub-chair."

4 CHAIRMAN LOCKYER: I notice a lot of water agencies and  
5 a few farmers, and so on, that have very nice things to say.  
6 But I don't see any of the sort of environmental-type groups at  
7 all.

8 Is there any reason for that? Usually they're not  
9 embarrassed about conveying their opinions.

10 MR. STUBCHAER: No, I don't know of any particular  
11 reason.

12 I've tried to be fair and moderate in all of our  
13 deliberations and decisions. I did not personally solicit any  
14 letters. I appreciate those which were sent in.

15 CHAIRMAN LOCKYER: During your tenure on the Board,  
16 what was the hardest vote that you remember? Anything come to  
17 mind?

18 MR. STUBCHAER: Well, Mono Lake was a difficult  
19 decision, trying to balance the loss of water to Los Angeles,  
20 the loss of hydro-electric power generation with the needs of  
21 the lake.

22 Then the Bay-Delta standards were not really that  
23 difficult because the various parties arrived at a consensus to  
24 present to us. If they hadn't done that, it would have been  
25 very difficult.

26 Now we hope same will happen in our process for  
27 allocating the water costs of meeting the Delta standards, to  
28 differentiate from the Bay. And that could turn out to be very

1 difficult, but we haven't done it yet. We're in the process.

2 CHAIRMAN LOCKYER: With respect to Mono, was there a  
3 split vote on the Board.

4 MR. STUBCHAER: No, it was unanimous.

5 CHAIRMAN LOCKYER: There seems to be growing concern  
6 about groundwater supplies being exhausted.

7 Do you have any general philosophy or thoughts about  
8 how we should deal with that?

9 MR. STUBCHAER: I believe the buzz phrase today is  
10 sustainable development. I'm not in favor of overdrafting  
11 groundwater basins for short-term gain at long-term cost.

12 I was -- during my career in Santa Barbara County, we  
13 took measures to address the long-term overdraft in our  
14 groundwater basins. But as you probably know, in California, no  
15 government agency has jurisdiction in allocating groundwater,  
16 unlike the other western states. It's become a property right.  
17 Groundwater is viewed as a property right.

18 So, there is legislation that requires the preparation  
19 of groundwater basin management plans. I believe that's a good  
20 step.

21 I believe that groundwater management is best done at  
22 the local level, and some agencies in Southern California have  
23 been doing that for a long time and are world leaders in that  
24 regard. There are other parts of California where improvement  
25 still is needed.

26 But we as a state board do not have the jurisdiction to  
27 impose that improvement, except through quality. If quality  
28 starts being degraded to such an extent that a basin



1 adjudication can be required, we can do that. It was done in  
2 the Oxnard Plain. There was a threat of it, and consequently,  
3 pumping restrictions and basin management proposals were put  
4 into place.

5 We are going through that now in the Salinas Valley,  
6 where there's severe sea water intrusion from Monterey Bay. It's  
7 almost up to Salinas. And we are trying to get that problem  
8 addressed by the local entities.

9 CHAIRMAN LOCKYER: Yes, Senator.

10 SENATOR AYALA: I have one more question.

11 What is your position in terms of building holding  
12 facilities south of the pumps at Tracy so you can capture flood  
13 water that today, not only they flood the cities, but they go  
14 out to sea with no control at all. We could hold them in those  
15 facilities and pump it when we needed wherever in the state.

16 MR. STUBCHAER: I think that reservoirs south of the  
17 Delta, and even south of the Tehachapis, are probably one of the  
18 best features that can be done in the future, as long as the  
19 water can be pumped in the Delta.

20 The New Magueny Reservoir in your area, that  
21 Metropolitan is building, has the big advantage of being beyond  
22 the San Andreas fault. In case there's a rupture of that fault,  
23 they'll have several hundred thousand acre feet in storage  
24 there. When water is available in the Delta for pumping, it  
25 should be, and it can be stored off-stream, so it doesn't have  
26 the environmental impacts of some of the dams. And I think it's  
27 a good proposal.

28 SENATOR AYALA: One of the big problems with that is



1 the fact that the aqueduct itself choked in at 70 percent of  
2 capacity at the input. We ought to open it up, to use that for  
3 what it was built for when we built the facility with tax  
4 dollars. We don't utilize it to its fullest capacity.

5 We're wasting tax dollars. And today, the input at the  
6 aqueduct is choked at the input at 70 percent capacity. It  
7 doesn't matter what we do in the Delta-Bay to increase the  
8 capacity of water. No more than 70 percent of its capacity can  
9 flow south through the aqueduct.

10 I know it doesn't matter whether you're building north  
11 or south of the Tehachapis, because you've still got to pump it  
12 over the mountains, and that's a cost of power.

13 Do you support holding facilities or underground basins  
14 where we can store the water during flooding conditions?

15 MR. STUBCHAER: I support it in concept. I don't have  
16 any particulars.

17 SENATOR AYALA: Good enough. Thank you.

18 CHAIRMAN LOCKYER: You have dodged the bullets. They  
19 weren't coming from him; they were coming from us northerners.

20 SENATOR AYALA: I like him.

21 CHAIRMAN LOCKYER: Are there any other questions.

22 Anyone that wishes to comment?

23 The only question I have, frankly, really has to do  
24 with the duration of the term. I'm beginning to have some doubt  
25 about whether we should be confirming appointments that run into  
26 next Governor's term. But I think the next Governor, whoever he  
27 or she is, will want you to serve and continue doing your fine  
28 job, so I'm not going to be aggressive about this worry, at

1 least today.

2 What's the pleasure of the Committee?

3 SENATOR BEVERLY: Move we recommend confirmation.

4 CHAIRMAN LOCKYER: All right, call the roll.

5 SECRETARY WEBB: Senator Ayala.

6 SENATOR AYALA: Aye.

7 SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator  
8 Petris.

9 SENATOR PETRIS: Aye.

10 SECRETARY WEBB: Petris Aye. Senator Beverly.

11 SENATOR BEVERLY: Aye.

12 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

13 CHAIRMAN LOCKYER: Aye.

14 SECRETARY WEBB: Lockyer Aye. Four to zero.

15 MR. STUBCHAER: Thank you, Senators.

16 CHAIRMAN LOCKYER: Keep up the good work.

17 [Thereupon. This portion of the

18 Senate Rules Committee hearing was

19 terminated at approximately 4:02 P.M.]

20 --ooOoo--

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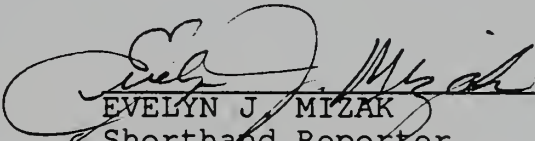
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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

MEMBERS ABSENT

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOHN T. FLYNN, Director  
Department of Information Technology

SENATOR QUENTIN KOPP

MARGIE J. PHARES, Member  
Fish and Game Commission

SENATOR STEVE PEACE

GERALD MERAL, Executive Director  
Planning and Conservation League





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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Let's go to the next item, which is Mr. Flynn. Senator Kopp, you're on time for Mr. Flynn.

SENATOR KOPP: Thank you very much, Mr. Chairman.

I would like to present John Flynn to this Committee and recommend his approval. And I do so because, not of a personal friendship with Mr. Flynn, who is originally from the Boston area, but as Chairman of the Select Senate Committee on Information Technology in State Government, which was established almost three years ago.

Mr. Flynn was appointed last year by the Governor to his present position as Chief of Information Technology, consistent with legislation that was introduced by Senator Al Alquist and enacted by the Legislature and the Governor.

My testimony and my belief are based upon my experience and observation of Mr. Flynn over the period since he has been appointed.

In the role of Chief of Information Technology, or as it's probably more popularly referred to, as the Information Technology Czar in the executive branch, he has personally appeared at two hearings of the Select Committee. He's provided staff assistance with respect to two further hearings. He has included our Committee in planning a Technology Demonstration Day for the Legislature. I don't know if you recall that, but it was certainly novel.

He has ordered the staff of the office to participate in a task force on public access to computerize government

1 records in connection with bills effecting provisions of the  
2 California Public Records Act, which I introduced last year, and  
3 which is up on Wednesday before the Assembly Appropriations  
4 Committee, it's SB 323.

5 He has had but a limited period of time to accomplish  
6 the requirements of Senate Bill 1 from the last session. His  
7 staff is still being assembled. He, however, was able to  
8 deliver on time the first annual report of that office to the  
9 Legislature. And he has certainly emphasized some of the  
10 successes of information technology in California state  
11 government. And those successes are probably over shadowed,  
12 unjustifiably, by the failures that antedated his appointment.

13 He does, Mr. Chairman and Members, for the record, need  
14 in my strong opinion, strong support from the chief executive of  
15 the State of California to accomplish the objectives embodied in  
16 SB 1 literally and as a matter of legislative intent. And I  
17 give you two examples in that respect, not to deflect or detract  
18 from my recommendation of confirmation, but because I want to  
19 make it a part of the record, Mr. Chairman and Members.

20 Funding for the year 2000 improvements in information  
21 technology was uniformly denied by the Department of Finance  
22 despite Mr. Flynn's clear demonstration of the fact the state  
23 could save a significant amount of money if it were  
24 accomplished. And conversely, that the state would incur  
25 additional cost by reason of inaction.

26 And secondly, there must be strong support by the  
27 Governor for Mr. Flynn insofar as policy making for project  
28 management over the new telecommunications infrastructure, which

1 is a very difficult procurement, very complex. That power was  
2 reflected in Senate Bill 1266 which the Senate passed, the  
3 Assembly passed, and then was opposed by the Department of  
4 General Services after it was presented to the Governor, and the  
5 Governor eventually vetoed it.

6 So, those are the points pertinent to the individual  
7 who, I believe, sincerely possesses the strong desire and  
8 motivation to furnish California with nothing but successes in  
9 the development of information technology. At the same time, I  
10 do memorialize for the record the need for both legislative  
11 support, which would be embodied in his confirmation, but also  
12 executive support after that confirmation occurred.

13 Thank you.

14 CHAIRMAN LOCKYER: Thank you, Senator, very much.

15 Mr. Flynn, welcome, and is there any sort of general  
16 thing you'd like to say as an opening?

17 MR. FLYNN: Not in particular, Mr. Chairman, but I  
18 would just like to mention on Senator Kopp's gracious remarks  
19 there.

20 I do believe that, particularly on something like the  
21 year 2000 issue that everybody's heard a little bit about, in my  
22 case I've probably heard a little bit too much about, but  
23 frankly, one of the rules I've always had, I don't think you  
24 take a problem to your boss until you've got some kind of a  
25 solution for it and have identified the problem appropriately.

26 I think in the question of the year 2000, what we have  
27 done is, we have established a statewide task force made up of  
28 members from virtually every agency in state government, and



1 their initial task will be to determine what the impact is of  
2 this year 2000 problems before we go to anyone and come up some  
3 kind of requirement for funding.

4 In addition, I have also tasked agencies within state  
5 government to start looking in among themselves at where they  
6 could save money on some of their programs through the  
7 utilization of information technology in order to pay for some  
8 of these year 2000 problems.

9 So, I do believe that the Senator and I have a little  
10 bit of a gentlemen's disagreement on that, and I think what  
11 we're doing is the right approach: identify the problem;  
12 identify the impact; scope it in terms of finances and resources  
13 that are required; and then look to ways of funding it.

14 CHAIRMAN LOCKYER: I guess there are a number of  
15 questions that are significant but do get somewhat technical,  
16 and I don't want to get us off on too many detailed tangents.

17 Perhaps a way to introduce the topic is to ask you what  
18 the most complicated or difficult issue has been so far that  
19 you've had?

20 MR. FLYNN: Well, I think, Mr. Chairman, that the  
21 problems I have so far have been kind of two-fold. One has been  
22 putting together a staff, which is always difficult,  
23 particularly in a public sector environment.

24 CHAIRMAN LOCKYER: Is that done now? Have all the  
25 slots been filled?

26 MR. FLYNN: Well, we were counting heads on the way  
27 over here, Mr. Chairman, and we have fifteen bodies there  
28 today. I have fifteen positions, and there's several of those



1 are still unfilled.

2 We are utilizing interns from the CSUS, as well as some  
3 loaned employees. We're almost there. I expect to be fully  
4 staffed from our fifteen positions in the next several --  
5 certainly no more than a month or so. And we have -- all the  
6 new positions are being -- we are preparing advertisements at  
7 this time. So, we expect to be fully staffed up in the  
8 short-term.

9 But as I was saying, that has proved particularly  
10 vexing, but in addition, I think the most critical thing on my  
11 agenda has been oversight on some of these big, major, complex  
12 information technology projects. Projects whose, let's say,  
13 less than a matter of less than -- their less than successful  
14 outcomes resulted in me moving from Boston, as a matter of  
15 fact. I think that's been our first course of business.

16 CHAIRMAN LOCKYER: That's D.M.V., some of the other,  
17 Social Services?

18 MR. FLYNN: Yes, sir.

19 CHAIRMAN LOCKYER: Anything missing? What did you  
20 learn, in looking back at all of that?

21 MR. FLYNN: I think the biggest thing we learned from  
22 those episodes is the fact that there wasn't independent  
23 oversight that was able to identify problems early on in the  
24 process, bring those problems to the attention of the decision  
25 makers, and at that point in time, work out a flexible, a  
26 structured scenario to get the project back on track, or to  
27 abandon it altogether and cut the loss.

28 And frankly, that's what happened, I think, now. We

1 have evidence that these independent oversight firms that we  
2 brought on board have been able to identify problems early on.  
3 Require stringent reporting requirements to the vendors, and if  
4 we recognize the problem, we stop the project. We stop it until  
5 it's straightened out.

6 And I would just like to emphasize one other thing.  
7 And I'll go on record here, we are going to have problems.  
8 There are going to be more problems.

9 We're a large organization, sixth or seventh largest  
10 economy in the world. Even the private sector, according to CIO  
11 Magazine, estimates that over 50 percent of major complex  
12 information technology projects in the private sector could  
13 fail.

14 That's why it's so important to break down some of  
15 these mega projects, if you will, into more feasible, phased  
16 implementations to improve the chances of success.

17 CHAIRMAN LOCKYER: There is a comment in staff work  
18 sheets that, I guess, could be called modestly critical of the  
19 July interim report, suggesting that it is a little bit light on  
20 sort of clear task objectives, and potential outcomes, and  
21 schedules.

22 Is it just --

23 MR. FLYNN: That's a fair assessment, Mr. Chairman. As  
24 a matter of fact, we've already met with representatives from  
25 the Legislative Analyst's Bureau to go over those particular  
26 issues.

27 I agree. I base all my work and all my staff's work  
28 and our entire organization on work plans, with detailed bar

1 charts, and dates, and graphs, et cetera. And we are in the  
2 process of putting together our strategic plan. That's the only  
3 way I manage, is with those kinds of tools.

4 CHAIRMAN LOCKYER: It seems like that's partly what  
5 went wrong in the past. So, just by way not replicating the  
6 mistake, you seem to be sensitive to that.

7 MR. FLYNN: Right, exactly.

8 CHAIRMAN LOCKYER: There also is some analysis of  
9 proposals for data center consolidation, and a suggestion that  
10 there is a little bit of, I guess, lack of clarity as to the  
11 Department of Finance's role, and your Department's obligations.

12 MR. FLYNN: Certainly, I think the fact that my  
13 organization, the Department of Information Technology, the  
14 former Office of Information Technology, and before I came on  
15 board, the Governor's Task Force on Technology and Policy and  
16 Procurement had recommended and established, actually, the  
17 Governor's Office of Technology. In fact, when I first  
18 interviewed for this position -- a quick story Mr. Chairman -- I  
19 said, Governor's Office of Technology, a GOT. And I said, "Is  
20 that got or is that goat, as in scape goat?" I wasn't sure what  
21 I was setting myself up for.

22 But frankly, there was a bit of confusion. I think  
23 there was some confusion over the roles of the organizations,  
24 but we are working very closely with the Department of Finance  
25 to make sure that there is no redundancy or conflict in the  
26 goals of both organizations. Certainly, the Department of  
27 Finance, and through its Technology Investment Review Unit, is  
28 responsible for final budget approval for all information



1 technology projects.

2 CHAIRMAN LOCKYER: So, you don't see the separate  
3 efforts as duplicative or confusing?

4 MR. FLYNN: Regarding data center consolidation, no.  
5 I think there was some confusion over the funding for the audit  
6 that was being done by the Department of Finance. They were  
7 going to audit the rates of the Department, and I think that's  
8 most appropriate. I think it's required by federal statute, as  
9 a matter of fact.

10 As you know, a lot of our programs, for example, in the  
11 social service area, the Health and Welfare Data Center, et  
12 cetera, those charges have to be applied against the federal  
13 contracts, and those changes must stand up to federal scrutiny.

14 CHAIRMAN LOCKYER: So, that's a separate effort than  
15 what you're undertaking?

16 MR. FLYNN: Yes.

17 CHAIRMAN LOCKYER: Senator Ayala.

18 SENATOR AYALA: Mr. Flynn, you're authorized fourteen  
19 positions besides the Director, yourself. You filled nine of  
20 those positions; three have already left, I understand.

21 What kind of background do they have? I understand one  
22 of the people you hired was a speech writer, and another one was  
23 appointed to run the Assembly Computer Services.

24 What background do they have to fit into your program?

25 MR. FLYNN: Senator, good question. But take into  
26 consideration the fact that we are a department. We are a  
27 department that reports directly to the Governor.

28 I'd be lying if I didn't say that a major portion of my



1 job is the tracking of legislation and things going on over in  
2 this building. It's amazing how many different -- in fact, if  
3 we didn't have the ability to search the Internet for  
4 information to determine where information technology, and  
5 computers, and Internet come up in so many different bills -- I  
6 mean, even today, several Legislators mentioned the use of  
7 technology.

8 We have to track legislation, and the person you're  
9 referring to that came over from the Governor's Office is  
10 primarily responsible for that. As a matter of fact, the  
11 individual wears about five hats in addition to his legislative  
12 responsibilities.

13 It's kind of just like a hospital. You're not going to  
14 find nothing but surgeons working there. We've got to have some  
15 staff people. We've got to have people familiar with the  
16 Legislature. We have to have media people. And I think we've  
17 done a good job at that.

18 I don't have enough positions -- I don't have enough  
19 people to use them not frugally.

20 SENATOR AYALA: Again, my question is, are those people  
21 qualified?

22 MR. FLYNN: Absolutely.

23 SENATOR AYALA: With the technical background to fit  
24 into your program?

25 MR. FLYNN: Absolutely. As I said, I have done  
26 extensive background reviews of all my staff. As I said, I'm  
27 not about to squander my resources in such a way.

28 I'm not going to get marked here on how many people I

1 found a job for. I'm going to get marked on how good a job we  
2 do overseeing these I.T. projects and utilizing the resources of  
3 the taxpayers of California in the best way through coordinating  
4 our implementations of technology.

5 SENATOR AYALA: Three of the nine have already  
6 resigned. Why is there such a large turnover?

7 MR. FLYNN: Well, I think, in fact, some of them were  
8 transferred, sir. I don't think they were truly resigned.

9 Let me put it this way. As I mentioned earlier in my  
10 little aside there, this organization, before it had a chief  
11 information officer, went through several iterations, the  
12 Governor's Office of Technology, and other ones, before it  
13 became the Department of Information Technology.

14 Individuals were loaned to our department and have gone  
15 back to other agencies. I think that's the case in two out of  
16 three of those issues. And in the third one, it was a transfer  
17 to another agency, which was a mutual agreement.

18 SENATOR AYALA: Reading information on your  
19 department, I hope it doesn't become catch-all for the Senate,  
20 or the Assembly, or the Governor for people they want to dispose  
21 of.

22 MR. FLYNN: I wouldn't stand for that, sir. I would  
23 not stand for that. You have my word.

24 CHAIRMAN LOCKYER: That's OCJP, Office of Criminal  
25 Justice Planning.

26 SENATOR AYALA: I just had some questions about the  
27 nine positions you've filled, and the high turnover, and then  
28 the qualifications of these folks to really fit into your

1 program of what you're trying to accomplish.

2 MR. FLYNN: As I said, I want to make sure I have the  
3 best people for the job. I think that's one of the reasons  
4 these appointments have taken as long as they have, that we just  
5 don't want to squander those opportunities with people you know  
6 that are going to make or break this organization.

7 We've been very fortunate to attract people not only  
8 from within government, but within the private sector as well,  
9 as was intended by the Governor's task force. I think we're  
10 building a staff now that we're starting to attract some of the  
11 more exceedingly brilliant and innovative folks from within  
12 state government to our organization. I think that's a big  
13 positive. I think a lot of it had to do with what we've been  
14 able to accomplish these first six months.

15 SENATOR AYALA: How long has that been in existence?

16 MR. FLYNN: January first, the Department became  
17 full-fledged.

18 SENATOR AYALA: How many minor and major information  
19 technology projects have you reviewed or approved? Are there  
20 any major or minor information technology projects that you have  
21 approved or reviewed in that time?

22 MR. FLYNN: As a matter of fact, we just went through  
23 -- I'm pretty much a stickler on the numbers, and we get  
24 anywhere -- I think the number was 76 new projects every year  
25 from throughout state government, totaling in the billions of  
26 dollars. Some of them are multi-year projects. The vast  
27 majority of those projects have been approved, probably in the  
28 neighborhood of 50. The rest are requiring more information or



1 have been denied.

2 At the same time, we are looking at projects, as I  
3 mentioned earlier, that are ongoing in nature. The one that I  
4 think that has gotten the most interest has involved the  
5 Corrections Management Information System, where, working with  
6 the executive, Jim Gomez, and the success partner, Logicom, it's  
7 a private sector organization, we identified some problems with  
8 this implementation and stopped the project.

9 SENATOR AYALA: I have no other questions,  
10 Mr. Chairman.

11 CHAIRMAN LOCKYER: Are you undertaking some kind of  
12 effort to rationalize CALNET, and who would participate, and  
13 what costs?

14 MR. FLYNN: Sure. It's interesting, because you ask  
15 people what CALNET means, five people, five different answers.

16 I look upon the CALNET initiative, as I think most  
17 people know it here, as an attempt to rationalize the  
18 telecommunications infrastructure, which is a fancy word that  
19 people use for basically the underlying and the foundation of  
20 our wires that connect our different computers across the state.

21 To take a look at how it sits right now, you have about  
22 17 major networks that are owned, or operated, sometimes  
23 operated by the private sector, in support of various functions  
24 of the state. For example, you have the Health and Welfare  
25 Data Center with a major network. You have the Teale Data  
26 Center with a major network. You have the Department of Motor  
27 Vehicles would have a major network, and so on.

28 Well, what happens is, every time one of these folks or



1 one of these agencies decide they need a network, they go out  
2 and say, "Well, I want to run dedicated lines from Sacramento to  
3 San Francisco to L.A. to San Diego, across the state."

4 Well, the same thing happens the next time another  
5 agency wants to do it, and so on, and so on, and so on. So,  
6 consequently, you are having redundant dedicated lines that,  
7 say, run between various cities, and each one of them may only  
8 be used about 50 percent, 60 percent of the time in many cases.

9 Whereas, if you went to the vendor in a unified way and  
10 leveraged the resources of the state, you say, "Listen, here's  
11 how much band width we need for this connection. Just sell us  
12 what we need. Don't sell us one for each agency."

13 That's the whole concept behind this integration of  
14 CALNET. It's a very exciting opportunity. In fact, we're  
15 looking at, in working with DGS, we're looking at a possibility  
16 of taking three -- or it may be as high as five hundred million  
17 dollars a year in telecommunications cost, and saving up to 20,  
18 25 percent of that; money that could be invested in things like  
19 the year 2000 problem, or new applications, or video  
20 conferencing, et cetera, for government.

21 CHAIRMAN LOCKYER: Other questions.

22 Is there anyone present who wishes to present any kind  
23 of testimony.

24 If not, I'll ask Senator Beverly for a motion.

25 SENATOR BEVERLY: Move we recommend confirmation.

26 CHAIRMAN LOCKYER: Anything you want to add in  
27 conclusion?

28 MR. FLYNN: Thank you for your support.

1 CHAIRMAN LOCKYER: Let's call the roll.

2 SECRETARY WEBB: Senator Ayala.

3 SENATOR AYALA: Aye.

4 SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator  
5 Petris. Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

8 CHAIRMAN LOCKYER: Aye.

9 SECRETARY WEBB: Lockyer Aye. Three to zero.

10 MR. FLYNN: Thank you, sir.

11 CHAIRMAN LOCKYER: We're counting on you to straighten  
12 out some of these problems.

13 Ms. Phares is our next person to hear from.

14 Good afternoon.

15 MS. PHARES: Good afternoon. I was expecting Senator  
16 Peace to come and introduce me.

17 CHAIRMAN LOCKYER: He can pop in at any time.

18 Do you want to start with any kind of introduction, or  
19 explain what you're doing, who you are, anything like that?

20 MS. PHARES: Okay. I thought Steve was going to  
21 introduce me.

22 CHAIRMAN LOCKYER: If you want, we'll just wait a  
23 minute until he shows up. Just sit right there, and let's take  
24 up another item.

25 [Thereupon the Committee acted on  
26 legislative agenda items.]

27 CHAIRMAN LOCKYER: Senator Peace, back to item number  
28 two.

1           SENATOR PEACE: Good afternoon.

2           CHAIRMAN LOCKYER: Did you want to say anything of an  
3 introductory sort?

4           SENATOR PEACE: Have we just started?

5           CHAIRMAN LOCKYER: Yes, we're waiting for you.

6           SENATOR PEACE: Well, I'm here.

7           I appreciate the opportunity, Mr. Chairman, to say a  
8 couple brief comments on behalf of Ms. Phares' nomination. I  
9 had the opportunity to work with her over the past few years in  
10 a couple of different iterations in public work.

11           She has served as an appointee in varied capacities at  
12 the local level as well as the most recent appointment on the  
13 Commission.

14           She has taken on tasks that often are inherently  
15 controversial, and I believe, more than anything else, has shown  
16 herself to be a person who is willing to learn while on the job,  
17 if you will. She has not always been a person who necessarily  
18 knew the ins and outs of all of the intricacies and the  
19 controversies that are typically associated with some of these  
20 appointments, but she's taken the time, unlike many other  
21 appointees I've observed over the years, to become  
22 knowledgeable.

23           And in each case where folks may have been discomfited  
24 by or uncertain about her appointment initially, parties on all  
25 sides have come to respect her work product as being  
26 deliberative, as being a person who is very open to both the  
27 prospectives of differing constituencies, and, I think, most  
28 importantly, and I think the point I want to underline, willing



1 to be open-minded herself about issues, and not at all driven in  
2 her decision making process by some sorts of philosophical  
3 mandate that she felt that she brought as a part and parcel of  
4 her appointment.

5 She is, I believe, a person who has shown the  
6 willingness and to dedicate both the commitment to looking at  
7 each issue that is before her on a case by case basis, and  
8 attempting to understand what her responsibility is, the  
9 fiduciary, the public, is.

10 And also most importantly, brought along with that,  
11 that willingness, a willingness to spend a lot of time. We very  
12 commonly find appointees in these kinds of positions whose time  
13 on task consists of the time that they attend the meetings.

14 I think if there's one trait which sets this nominee  
15 apart from all the others, frankly, all others that I have ever  
16 witnessed, is the amount of time that she puts into it. Whether  
17 you like the ultimate conclusion she comes to, or you don't like  
18 the ultimate conclusion she comes to, she puts a great deal of  
19 time and effort.

20 There are a couple occasions, to be honest with you,  
21 sometimes she has been somewhat exhausting on a couple of  
22 circumstances in which I have been involved. Sometimes she  
23 wants to know more than I want to tell her in terms of the  
24 amount of time I've been willing to put into thing.

25 She's a detail person. It, no doubt, is part of what  
26 has made her successful in her private life, but she is  
27 voracious in terms of her inclination to want to absorb  
28 knowledge, and to take that knowledge, organize it, and try to



1 make the best decisions that she can with it.

2 I have been on both sides of the fence with respect to  
3 issues in which she has been in circumstances to have influence  
4 and decision on in terms of where I've agreed with her and  
5 others where I've disagreed with her. I could not criticize her  
6 in either case, though, with respect to the process by which she  
7 came about drawing conclusions in terms of what her final  
8 decision would be.

9 She is, I believe, a very independent thinker. That is  
10 probably, in part, one of the things that I may, in principle,  
11 find attractive about her as a nominee, but I also find  
12 frustrating on other occasions when one of us may want something  
13 to happen and find she has to be convinced on her terms, not  
14 necessarily ours.

15 She, too, is a San Diegan, and as you know, we have a  
16 predisposition for favoring our fellow San Diegans. I make no  
17 apologies for that interest as well.

18 But she also a San Diegan who is nominated, who I have  
19 a great deal of confidence in would not, down the line, be one  
20 that would turn out to be someone we would have regretted having  
21 supported.

22 As you know, this is only the second nomination I've  
23 ever taken the time to come before this body in support, Mr.  
24 Neeper being the prior.

25 CHAIRMAN LOCKYER: Who was the other?

26 SENATOR PEACE: Mr. Neeper, PUC Commissioner.

27 CHAIRMAN LOCKYER: How do you feel about that today?

28 SENATOR PEACE: Better every day. The more Mr. Fessler

1 talks, the better I feel about Mr. Neeper.

2 And I will try to continue to not make it a habit to be  
3 here, but I felt very strongly, particularly in light of, I know  
4 there's some concerns with respect to her nomination. And I  
5 respect some of those concerns that have been reflected in the  
6 record and in writing in terms of understanding where those  
7 constituency groups have some misgivings.

8 I also believe that over time, the concerns that they  
9 have, and the misgivings that they have, and the fears that they  
10 have will be, if not eliminated, mitigated by virtue of the  
11 conduct of the Commissioner over time.

12 CHAIRMAN LOCKYER: Part of the problem, Senator, and it  
13 really almost-- it doesn't go to Ms. Phares' qualifications, is  
14 that a majority of the five-member Commission are, in one manner  
15 or another, associated with land development and real estate.

16 And at some point you just wonder how much is too much  
17 of that perspective on a commission that should arguably be more  
18 balanced. That's one of the problems we have.

19 The good news is that the term expires kind of  
20 concurrent with Pete Wilson leaving, and so the next Governor  
21 might have something to say about who the slot would be filled  
22 by, unlike some of the other members of the Commission that run  
23 into the next century.

24 SENATOR PEACE: I would hope the Chairman also might  
25 solicit the nominee's support and recognition of that imbalance,  
26 as least insofar as it is reflected in the background of the  
27 commissioners, and give some indication of how she would intend  
28 to factor that into the decision making.

1 CHAIRMAN LOCKYER: Thank you very much, Senator.

2 SENATOR PEACE: Thank you.

3 CHAIRMAN LOCKYER: Well, okay, now it's your turn.

4 Take a deep breath, and it's okay. We'll ask some questions to  
5 begin, and you can tell about yourself.

6 You've been serving almost a year.

7 MS. PHARES: Since last October.

8 CHAIRMAN LOCKYER: What would you view as the most  
9 difficult issue that's come up during that time.

10 MS. PHARES: Probably working with the commercial  
11 fishermen and the sports fishermen, trying to resolve their  
12 issues related to the white sea bass management program.

13 You've got people that are traditionally not conducive  
14 to working with each other, and I've been appointed as a  
15 subcommittee of the Commission to try to work with the two  
16 different constituencies, and trying to come to some resolution.

17 CHAIRMAN LOCKYER: There hasn't been a policy yet?

18 MS. PHARES: Yes, there's been a policy approved by the  
19 Commission.

20 CHAIRMAN LOCKYER: Who's unhappy?

21 MS. PHARES: Well, probably some of the commercial  
22 fishermen. It's not that they're -- well, they are unhappy, but  
23 they have some concerns. It's not specific to this program. It  
24 is has to do with the history of where they're coming from.  
25 They admit that that's part of where the problem is. I've been  
26 making an effort to meet with their different representatives up  
27 and down the state.

28 And one of the comments I got from the last gentleman I



1 met with was, "You're the first commissioner that's ever spent  
2 any time coming and talking to the commercials and trying to  
3 learn more about our problems." He said, "I have to give you  
4 credit for that."

5 And I have been. I think that's one of the things I've  
6 been doing. I've been spending a lot of time trying to meet  
7 with different groups, different people throughout the state  
8 that are -- have come to our Commission and are on our agendas  
9 with items, and try to get to know where they're coming from,  
10 and understand what their concerns are.

11 And I think I've probably done a very good public  
12 relations type of job for the Commission in that respect, and I  
13 made myself available to a lot of people since I've been there.  
14 I've probably been spending about 50 percent of my time working.

15 CHAIRMAN LOCKYER: Fifty percent?

16 MS. PHARES: Yes.

17 CHAIRMAN LOCKYER: I have a feeling that's probably  
18 more than other members of the Commission.

19 MS. PHARES: Well, I don't know how to do anything  
20 halfway, unfortunately. If I'm going to do it, then I'm going  
21 to do the best I can. And it kind of keeps snowballing, because  
22 every time you do something, then you think of something else  
23 you should be doing.

24 You asked about the coho salmon. That issue has not  
25 come up before the Commission during the time that I've been on  
26 there.

27 It's my understanding it was listed south of San  
28 Francisco as an endangered species, and that was an unanimous



1 decision by the Commission, but it hasn't come up since I've  
2 been on the Commission.

3 CHAIRMAN LOCKYER: If there are conflicts that come  
4 before the Commission between economic benefits to the State of  
5 California or an area, and species preservation, how do you  
6 understand your legal obligations with respect to that?

7 MS. PHARES: It's my legal obligation that the  
8 economics are not taken into consideration when considering  
9 endangered species petitions. That this is done through a  
10 public hearing process where we take staff recommendation, we  
11 take the petitioner's recommendation, we take input from the  
12 public, which can come from a variety of sources: the general  
13 public, the scientific community. And we weigh all that  
14 information and make a decision.

15 And unlike what's done at the federal level, this is  
16 all done in a public forum, rather than kind of a group where  
17 people don't know what's going on.

18 And people feel very strongly about these issues. Most  
19 all the issues that come up before our Commission, people feel  
20 very strongly about.

21 And you can't make everyone happy. You just have to  
22 look at each issue, decide on the information and the testimony  
23 that you hear, and make the best decision you can. That's what  
24 I've been trying to do.

25 CHAIRMAN LOCKYER: I think I heard you say -- but you  
26 speak so softly -- that it was your view that, at least as far  
27 as the law is concerned, that you're not supposed to consider  
28 the economics. Just whether the species is, in fact,

1 endangered, and what can be done about that?

2 MS. PHARES: Right.

3 CHAIRMAN LOCKYER: Are there questions from Members?

4 Have you had an opportunity yet to think about what  
5 you've viewed as the process that's used for listing? Whether  
6 you think it makes sense, if it needs to be changed? Do you  
7 have any sort of observations of that sort yet?

8 MS. PHARES: Well, we've only had -- I mean, since I've  
9 been on the Commission, those issues have only come up twice.  
10 All of the other issues, the other 20 or 25 agenda items have to  
11 do with more fish and game type related activities or  
12 decisions.

13 But although the public hearing process isn't perfect,  
14 and it's not always the easiest way to handle things -- being a  
15 benevolent dictator would be a lot easier -- I think it's a much  
16 better process than delegating it to a committee of any sort  
17 that goes out of view of the public and makes a decision and  
18 there's no accountability. People, I think, would find that far  
19 more disquieting and disconcerting, wondering what's going on,  
20 who's in control, and they don't have any input.

21 So, although the public hearing process is not perfect,  
22 I can't think of a better one right offhand.

23 CHAIRMAN LOCKYER: There's a note, an interview -- I  
24 guess these folk will have a chance to testify, but maybe I can  
25 at least ask the question. This was a discussion that had  
26 occurred with the Planning and Conservation League, where, I  
27 guess, they had some interview or discussion with you.

28 They make a point of your saying that you consider

1     yourself a private property rights person.

2             MS. PHARES: I think they asked me if I believed in  
3     private property rights, and I said yes.

4             CHAIRMAN LOCKYER: There aren't many that wouldn't say  
5     yes to that.

6             How about thinking that the Endangered Species Act  
7     might be unfair? Is that your view?

8             MS. PHARES: No.

9             CHAIRMAN LOCKYER: If there aren't questions --

10            SENATOR AYALA: I want to ask you, what do you consider  
11     biggest issue or problem facing the Department of Fish and Game  
12     today?

13            MS. PHARES: Everyone of our issues that come before us  
14     are highly emotional issues for people to deal with.

15            SENATOR AYALA: There's not one that stands out in your  
16     mind as the biggest issue?

17            MS. PHARES: It's sort of like, each meeting there's a  
18     big issue.

19            SENATOR AYALA: You've got little problems and big  
20     problems. What do you think is the biggest problem facing the  
21     Department of Fish and Game today?

22            MS. PHARES: The issues that I've been working on,  
23     white sea bass management program, I've been part of a  
24     subcommittee that's been negotiating and meeting with Hoopa and  
25     Urok Indians in Northern California on Native American issues as  
26     they relate to fishing rights and stuff on the Klamath River.

27            I've been part of the subcommittee that's meeting with  
28     the U.S. representative from Mexico to try to facilitate better



1 working relationships between our enforcement division and  
2 Mexico to cooperate and exchange of information. That's  
3 ongoing.

4 I'm trying to get meetings set up with our counterparts  
5 in Mexico to kind of facilitate better working relationships  
6 with our country and Mexico as they relate to fishing management  
7 issues, endangered species issues, that we have problems with  
8 enforcement, and there hasn't been an exchange or cooperation --  
9 exchange of information or much cooperation in the past. So,  
10 I've been working on that because the U.S. representative from  
11 Mexico happens to be in San Diego. So, I've been working on  
12 that.

13 They're all big problems.

14 SENATOR AYALA: Do you have a problem with protecting  
15 that land which is designated for Fish and Game from developers,  
16 from development.

17 I know that a lot of developers support you. That's  
18 why I'm asking you that.

19 MS. PHARES: Well, it's probably been my background of  
20 being a real estate consultant, where I've had an opportunity to  
21 work with them. So, they know me.

22 SENATOR AYALA: That doesn't cause a problem for you  
23 when it comes to protecting that land which is for that purpose?

24 MS. PHARES: In San Diego, we are working on setting  
25 aside 165,000 acres under an NCCP program.

26 SENATOR AYALA: To protect under the law?

27 MS. PHARES: Yes, and that requires the cooperation of  
28 developers, local agencies, land owners. And those have been



1 ongoing negotiations and efforts since 1990 in San Diego. We're  
2 finally, maybe by the end of this year, we are hopeful that  
3 we're going to have that plan in place. That's going to be a  
4 benefit to all of us in the development community. It's very  
5 interested in having that go forward, as well as many local  
6 agencies.

7 I met with Secretary Babbitt here recently in discussing  
8 that when he was out here signing the NCCP program in Orange  
9 County. That's a 37,000 acre preserve that we've set aside.

10 In fact, I attended the meeting in hopes that I would  
11 get to chance to talk to him about what we were doing in San  
12 Diego. I did get a chance to talk to him, and it turned out he  
13 was giving me a pep talk on the plan that we were doing in San  
14 Diego.

15 So, this is really an effort that has bipartisan  
16 support. It has support from the development community, the  
17 private sector and local agencies. It's very complex  
18 negotiations, but we're working very hard on it.

19 CHAIRMAN LOCKYER: You mentioned the Orange County  
20 habitat preservation proposal. One of the other ongoing  
21 disputes involves large sections of San Diego County, especially  
22 around Otay Mesa.

23 What's the current status?

24 MS. PHARES: Well, we expect to have that plan approved  
25 by the end of this year. And it's setting aside about 165,000  
26 acres in San Diego, all with connecting corridors. So, it's  
27 planning for habitat an ecosystem system, rather than a species  
28 over here, and a species over here, and then they end up getting

1 isolated, and it doesn't work very well.

2 This is kind of an innovative, creative approach to  
3 conservation, and it has required facilitations with people that  
4 are not necessarily used to working together. But this is in  
5 everybody's best interest.

6 It's right in my back door, and I'm looking forward to  
7 it being there for a long time.

8 CHAIRMAN LOCKYER: I guess one of the questions, and  
9 I'm sorry to inquire into personal finances, but it's one of the  
10 questions that's come up, is that you have some property right  
11 in the middle of that?

12 MS. PHARES: I do not own any property in the middle of  
13 the NCCP.

14 CHAIRMAN LOCKYER: How about a lien claim?

15 MS. PHARES: I have a lien against property that is  
16 security for a stipulated judgement, and that property is not in  
17 the NCCP. That property is probably due for approval tomorrow.  
18 It only means I will get paid. I will never get that property.

19 CHAIRMAN LOCKYER: I didn't hear you.

20 MS. PHARES: I said that property, I think, is coming  
21 up for approval tomorrow. It only means I will get paid. I  
22 will never own that property. It's not in the NCCP. It's only  
23 security for a loan.

24 CHAIRMAN LOCKYER: What do you mean comes up for  
25 approval?

26 MS. PHARES: It's -- the owner of the property is  
27 developing it.

28 CHAIRMAN LOCKYER: And they need to get approval from

1 whom?

2 MS. PHARES: The local jurisdiction.

3 CHAIRMAN LOCKYER: City Council or supervisors?

4 MS. PHARES: Yes.

5 CHAIRMAN LOCKYER: And if they approve, their approval  
6 is for some development.

7 MS. PHARES: Uh-huh, because there's -- this is land  
8 which has been farmed since the early 1900s.

9 CHAIRMAN LOCKYER: And your interest is what? It's  
10 something that would be advanced or benefited if the approval  
11 occurs?

12 MS. PHARES: No.

13 CHAIRMAN LOCKYER: Doesn't matter either way?

14 MS. PHARES: No. It's not my problem. I don't own the  
15 property. He just owes me money. Much like a banker or a  
16 mechanic's lien.

17 CHAIRMAN LOCKYER: I understand, but is there a lesser  
18 or greater likelihood of getting repayment depending on what the  
19 zoning decisions might be?

20 MS. PHARES: I almost hate to admit this in a public  
21 hearing, but I am so over encumbered. I mean, the property is  
22 worth so much more than what I'm owed that it doesn't make any  
23 difference as far as I'm concerned.

24 CHAIRMAN LOCKYER: So, for your interest, you'd get  
25 satisfied regardless of what they did.

26 MS. PHARES: That's right.

27 CHAIRMAN LOCKYER: It's not a property in a  
28 conservation planning area.



1 MS. PHARES: No. As I said, it's been farmed since the  
2 early 1900s.

3 CHAIRMAN LOCKYER: Other questions from Members? Then  
4 I think we'll take testimony from those who wish to express  
5 concerns or raise questions. Any other questions.

6 You can either stay there or step back. We do both.  
7 We're going to probably hear some people that will tell us why  
8 we should vote yes or no. You can stay and kind of pinch them,  
9 or whatever.

10 Let's ask if there's anyone present who wishes to say  
11 something on the positive side. Actually, we can take people on  
12 either side of the issue that would recommend either  
13 confirmation or not. Anyone present?

14 SENATOR BEVERLY: Go right ahead.

15 MR. MERAL: Thank you, Senator Beverly.

16 Mr. Chairman, Members, I'm Jerry Meral. I'm the  
17 Executive Director of the Planning and Conservation League. I'm  
18 testifying on behalf of ourselves and also for the Mountain Lion  
19 Foundation.

20 We regretfully must oppose Ms. Phares' nomination for  
21 this position. I do so reluctantly, because generally we would  
22 prefer to support the Governor's appointees. I've had many  
23 opportunities to do that before this Committee. This is only  
24 the third time in fourteen years, in fact, that I've actually  
25 appeared before this Committee in opposition to a nominee, but  
26 we feel strongly about this one.

27 The principle problem we have with the nomination is  
28 the lack of Ms. Phares' background in the actual job. This is



1 the primary commission that is responsible for the preservation  
2 of the public trust resources of the state and fish and  
3 wildlife. We have a large variety of species. We have  
4 enormously important hunting and fishing resources, and we would  
5 like to see people on the Commission who know something about it  
6 when they are appointed.

7         There's nothing wrong with learning on the job to some  
8 extent, but when the appointees know virtually nothing about the  
9 subject matter on commissions of this importance, and relatively  
10 small commissions -- this is only a five-member commission --  
11 and long-lived appointments -- these are six-year  
12 appointments -- we believe there should be more background and  
13 knowledge than this appointee has.

14         Secondly, despite her statement that there is no  
15 conflict with respect to the property on which she has a lien,  
16 this property is generally within the area that would be  
17 regulated by the various habitat conservation plans that are  
18 being considered in San Diego. We believe that this is a  
19 conflict of interest, and that if she was forced to vote on  
20 listing of species that were in this area, she would have a  
21 conflict of interest. But more importantly, I think it could  
22 color her votes on a wide variety of issues before the Fish and  
23 Game Commission. We believe that is an irreconcilable conflict.

24         In our interview, as Senator Lockyer mentioned, her  
25 view at the time, at least as expressed to us, was that economic  
26 considerations could be taken into account when voting on  
27 whether a species should be preserved in California. And while,  
28 of course, we know that the economy of the state is foremost in

1 foremost in most people's minds, the Fish and Game Commission is  
2 supposed to make its decisions based on scientific evidence.  
3 That is not, apparently, at least at the time, what she believed  
4 was primary in terms of deciding these kinds of matters.

5 Finally, I would also like to mention the question of  
6 the public trust. The Fish and Game Commission preserves trust  
7 resources. These are things that are owned by all the people.  
8 The fish, the wildlife, these are things owned by the people of  
9 the state.

10 In our interview, Ms. Phares did not express any  
11 concern about this particular aspect of the job, which, in our  
12 view, is the number one reason why we have a Fish and Game  
13 Commission. We wouldn't need a commission if people could just  
14 go out and take fish and wildlife without any concern about the  
15 fact that they're owned by the voters of the state. We think  
16 that in our interview, her concern on this matter was minimal,  
17 to say the least.

18 So, we very much regret that we must oppose her, but we  
19 do so vigorously and urge that she not be approved by this  
20 Committee.

21 SENATOR BEVERLY: Any questions of Mr. Meral?

22 Thank you, sir.

23 Anybody else wish to appear for or against the  
24 appointment? Is someone coming forward? Apparently not.

25 Would you like to respond to the points raised by  
26 Mr. Meral?

27 MS. PHARES: I haven't talked to Mr. Meral before, and  
28 he was not present in the interview which I have been in. So,

1 some of his information is coming second-hand. There may be  
2 some miscommunication here as to what I believe and what I don't  
3 believe.

4 SENATOR BEVERLY: You talked to representatives of the  
5 Planning and Conservation League, but not with Mr. Meral, I  
6 gather.

7 MS. PHARES: Right.

8 SENATOR BEVERLY: Any questions? Senator Ayala.

9 SENATOR AYALA: I have no questions.

10 The witness just indicated that people who serve on  
11 this commission should be experts and supporters of wildlife  
12 perservation.

13 People with common sense should be able to serve on  
14 that commission without having to have the expertise that you  
15 claim. I'm not sure that you have to be an expert on the  
16 conservation of wildlife in order to serve on that commission  
17 necessarily. It's probably helpful.

18 I think if you have a little bit of common sense, if  
19 you don't go into the deep end of things, either in terms of  
20 development or environmentally concerned efforts, I think either  
21 way, we have to have a balance between ecology and economy.  
22 Otherwise, I think we've got a lot of problems.

23 I'm not necessarily convinced that we have to have  
24 someone on the commission that has the expertise and supports  
25 the conservation measures that some people claim that we should  
26 have. I'd argue for that position.

27 SENATOR BEVERLY: What are the time constraints on this  
28 appointment? We have until October.

1 MS. MICHEL: October fifth, so we can put this over.

2 SENATOR BEVERLY: Obviously, there's a short  
3 Committee. It takes three votes.

4 We'll take the matter under submission and hold it over  
5 for future action.

6 Thank you.

7 [Thereupon. This portion of the  
8 Senate Rules Committee hearing was  
9 terminated at approximately 3:51 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR ROBERT BEVERLY, Vice Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ELIN MILLER, Director of Conservation

ANA M. OLIVAREZ, Warden  
California Medical Facility, Vacaville

FRANK R. SEARCY, President  
Chicano Correctional Workers Association

JAMES GOMEZ, Director  
California Department of Corrections

GARY T. ARANT, Member  
California Regional Water Quality Control Board  
San Diego Region

CHARLES E. BADGER, Member  
California Regional Water Quality Control Board  
San Diego Region

SENATOR DAVID KELLEY

MINERVA G. FIGUEROA  
Women Environmental Council (WEC)  
Border Chapter

GORDON COLOGNE



1 MARY-ANN WARMERDAM  
California Farm Bureau  
2 San Diego Farm Bureau

3 STEVE HALL  
Association of California Water Agencies

4 LAURA HUNTER, Clean Bay Campaign Director  
5 Environmental Health Coalition

6 LEE OLSEN, Chair  
Education and Conservation Committees  
7 San Diego Council of Divers, Inc.

8 MICHAEL D. IREY  
Commercial Mullet Fisherman  
9 South San Diego Bay

10 JOHN C. CANESTRO, Member  
State Building Standards Commission

11 ROBERT H. STORCHHEIM, Member  
12 State Building Standards Commission

13 BOB RAYMER, Technical Director and Staff Engineer  
California Building Industry Association

14 DON SCHULTZE  
15 California Building Officials

16 ART CARTER  
California Pipe Trades Council

17 DANIEL CARDOZO  
18 California Pipe Trades Council

19 GARY PATTON, General Counsel  
20 Planning and Conservation League

PETE PRICE  
21 California League of Conservation Voters

22 STEVE LEHTONEN  
23 Plumbing, Heating, Cooling Contractors

PHIL VERMEULEN  
24 California Legislative Conference  
25 Plumbing, Heating, Piping Industry (CLC)

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## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: The next one is Elin Miller, the Director of Conservation. We had a lengthy interview with her, you may recall. I believe it was Senator Costa that had brought her to the Committee and had nice things to say on her behalf.

I think that some of the Members of the Senate who had expressed concerns that had to do with conservation perhaps have had those matters addressed. I'm unaware of Member opposition at the current time.

So, this is before us for a vote only. Would there be any questions, Senator Petris or Ayala, that you wish staff to help with? We don't have the appointee.

SENATOR PETRIS: Move.

CHAIRMAN LOCKYER: We have motion to confirm, or to recommend that to the Floor. Call the roll, if you will.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Beverly. Senator Lockyer.

CHAIRMAN LOCKYER: Aye.

SECRETARY WEBB: Lockyer Aye. Three to zero.

CHAIRMAN LOCKYER: I think maybe a lot of the people who are present are here for the Warden at Vacaville. Maybe we'll be able to free up a few seats and create some room if we

1 do that one, number five on our file.

2 Hi.

3 MS. OLIVAREZ: Hi.

4 CHAIRMAN LOCKYER: How do you like this job?

5 MS. OLIVAREZ: I love it.

6 CHAIRMAN LOCKYER: Why? It's supposed to be hard.

7 MS. OLIVAREZ: First of all, I want you to know, about  
8 half the people that are here with me are my family.

9 CHAIRMAN LOCKYER: That's good, no overtime.

10 MS. OLIVAREZ: No overtime.

11 CHAIRMAN LOCKYER: Do you want to tell us a little  
12 about your experience in the system?

13 MS. OLIVAREZ: Certainly, thank you very much.

14 I am Ana Olivarez. I was appointed to the position of  
15 Warden at the California Medical Facility effective January  
16 first of this year.

17 Prior to that, I was the Warden at the Dueul Vocational  
18 Institution in Tracy, California. I was there for about three  
19 and a half years. So, I've been a warden for just over four  
20 years.

21 I've been in state service since 1973.

22 CHAIRMAN LOCKYER: What does it mean, Acting Warden,  
23 Department of Corrections, Tracy?

24 MS. OLIVAREZ: I was appointed as an interim Warden.

25 CHAIRMAN LOCKYER: Is that Dueul still?

26 MS. OLIVAREZ: Yes.

27 CHAIRMAN LOCKYER: I thought it was different.

28 MS. OLIVAREZ: Oh, no, same place.



1 CHAIRMAN LOCKYER: Go ahead.

2 MS. OLIVAREZ: I began my state service in 1973, and  
3 I've worked in a number of different state agencies, but I keep  
4 coming back to the Department of Corrections. I've worked as a  
5 correctional administrator in the Planning and Construction  
6 Division. I worked as an Associate Warden at Folsom Prison.

7 CHAIRMAN LOCKYER: Hopefully they don't have much work  
8 now.

9 MS. OLIVAREZ: When I was there, it was quite busy. I  
10 left there and went to Folsom Prison. I was an Associate Warden  
11 for programs, and then later Associate Warden for custody on the  
12 old side. Worked as a Chief Deputy Warden at the prison in  
13 Susanville, and then went to Dueul.

14 I've also worked in state service as personnel manager,  
15 as a chief of health and safety, and as a governmental program  
16 analyst.

17 CHAIRMAN LOCKYER: Well, you've lived in some of the  
18 garden spots of California.

19 MS. OLIVAREZ: Yes, I have. They actually are very  
20 nice. Nicer than they sound.

21 CHAIRMAN LOCKYER: What's been the toughest problem or  
22 decision you've made while you've been at Vacaville?

23 MS. OLIVAREZ: Well, probably in my first eight hours  
24 there. When I got there, we were in the middle of a  
25 tuberculosis incident, and that was quite interesting. That was  
26 probably the most stressful situation I've had to deal with.

27 CHAIRMAN LOCKYER: Are there people present who wish to  
28 comment for, or perhaps there'll be some questions so we can ask

1 for comment.

2 I'll note there's no opposition reflected in the file,  
3 which is nice so that helps.

4 MR. SEARCY: Good afternoon, Senator and Committee  
5 Members.

6 I'm Frank Searcy, Chicano Correctional Workers  
7 Association President.

8 At this time, we'd like to offer our support for Ms.  
9 Olivarez as Warden at California Medical Facility. The  
10 Association feels very confident that Ms. Olivarez has  
11 consistently displayed the utmost of her administrative  
12 abilities. She is a fine person and a fine Warden.

13 And as you know, as she has all ready explained to you  
14 previously also, at this point we feel there's not much more  
15 that we can add, other than we want to add and repeat that the  
16 Association does strongly support Ms. Olivarez as Warden at  
17 California Medical Facility. Thank you.

18 CHAIRMAN LOCKYER: Thank you very much.

19 Is there anyone else that wanted to make a comment  
20 at this time.

21 Perhaps I could ask for an update on the federal  
22 litigation and court orders with respect to psychiatric, mental,  
23 so on. What do you see happening to resolve those matters?

24 MS. OLIVAREZ: Well, we've had some activity here  
25 lately primarily as a result of the passage of the Prison  
26 Litigation Reform Act. We did go into federal court and ask  
27 that the Act be declared applicable to both the Gates consent  
28 decrees.

1           The court has ruled, the federal court at the district  
2 level, has ruled that that particular piece of legislation is  
3 not applicable to Gates.

4           CHAIRMAN LOCKYER: Why would that be?

5           MS. OLIVAREZ: They determined that Mr. Breed does not  
6 fit the definition of Master as defined in the Act. So, we are  
7 -- we have elevated our appeal to the Court of Appeals.

8           CHAIRMAN LOCKYER: How about getting a different  
9 Master? Can you get a Master that would fit the Act?

10          MS. OLIVAREZ: That -- I don't think we've approached  
11 it from that aspect.

12          CHAIRMAN LOCKYER: Isn't Breed a court-appointed  
13 Master?

14          MS. OLIVAREZ: Yes.

15          CHAIRMAN LOCKYER: So you could ask for somebody else?

16          MS. OLIVAREZ: The issue was, did the Act apply to that  
17 consent decree, and so no matter who the Master is, does the Act  
18 Apply? That was the issue that was brought before the court.

19          CHAIRMAN LOCKYER: The answer is yes, except you have  
20 wrong kind of Master.

21          MS. OLIVAREZ: The answer was no, because we don't have  
22 the right kind of Master.

23          CHAIRMAN LOCKYER: If you took care of the Master, then  
24 there might be another reason, I guess?

25          MS. OLIVAREZ: Right. That has been appealed.

26          I will say that we are audited every quarter on our  
27 compliance, and we had our most recent audit the first week of  
28 July. We were found to be in 100 percent compliance.

1 CHAIRMAN LOCKYER: Congratulations.

2 MS. OLIVAREZ: Thank you. We were also audited this  
3 month on the CRIPA, which is the Civil Rights of  
4 Institutionalized Persons Act. And we're audited once a quarter  
5 on CRIPA, and we were once again --

6 CHAIRMAN LOCKYER: Is that federal?

7 MS. OLIVAREZ: Yes, it is, and we were in 100 percent  
8 compliance. We've been in 100 percent compliance for last six  
9 quarters. So, we're doing okay.

10 CHAIRMAN LOCKYER: Can you maybe help us learn about  
11 aging and ill inmates?

12 MS. OLIVAREZ: Well, we have a lot of them.

13 CHAIRMAN LOCKYER: How many have you got of those?

14 MS. OLIVAREZ: Vacaville is an institution of 3200  
15 inmates. We are one of four licensed hospitals. We are the  
16 medical facility for primarily the northern institutions.

17 We have -- we also have a 500-bed AIDS unit. It's not  
18 the only AIDS unit in the state, but it is the largest. There  
19 are several other AIDS units also.

20 Our AIDS unit, though, does get the sickest of the  
21 sick. And we're fortunate that we have some really top caliber  
22 physicians who specialize in AIDS and in infectious diseases, so  
23 we're able to handle that very well.

24 We have a 17-bed hospice also that is in the same unit  
25 as the AIDS unit. We're a licensed, 65-bed acute care hospital.  
26 We also have 150 acute psychiatric beds as part of that license.

27 CHAIRMAN LOCKYER: So, something like two-thirds of  
28 your patients are psychiatric or hospitalized?



1 MS. OLIVAREZ: Correct.

2 CHAIRMAN LOCKYER: Or hospital-related commits.

3 MS. OLIVAREZ: Correct, the vast majority of our  
4 inmates are medical or psychiatric related.

5 Then the small general population that we do have is  
6 there primarily as a support.

7 CHAIRMAN LOCKYER: Senator.

8 SENATOR AYALA: As I recall, Vacaville was the first  
9 facility or the first institution to have a medical facility for  
10 the HIV positive inmates.

11 MS. OLIVAREZ: Yes.

12 SENATOR AYALA: Am I correct?

13 MS. OLIVAREZ: Yes.

14 SENATOR AYALA: You have them in other institutions?

15 MS. OLIVAREZ: We have them at Chino and Corcoran.

16 SENATOR AYALA: Do you just maintain these? Since  
17 there's no cure, do you just maintain these inmates while  
18 they're in that facility?

19 MS. OLIVAREZ: Actually, they're involved in drug  
20 therapy, and also we're -- we monitor their nutrition. And we  
21 have psychiatric and social work support.

22 So, I would like to think that it's more than  
23 maintaining.

24 SENATOR AYALA: You're maintaining them. Are they  
25 really improving their medical status?

26 MS. OLIVAREZ: Well, certainly if they -- AIDS is a  
27 terminal disease, so what you hope for is to relieve pain and to  
28 prolong life, and I think we're being successful to that end.

1           SENATOR AYALA: Are there any special problems at  
2 Vacaville that you'd like to tell the Committee about? I know  
3 you're over-crowded, and all those sort of things. What is  
4 happening at Vacaville that you'd like to tell us?

5           MS. OLIVAREZ: I'm sure every Warden would get up here  
6 and say, we need more money.

7           CHAIRMAN LOCKYER: More money.

8           MS. OLIVAREZ: Every Warden would get up here and say  
9 we need more money.

10          I really can't think of anything in particular that I  
11 would want to bring to your attention.

12          SENATOR AYALA: When you look at one institution,  
13 you've seen them all, right, in terms of problems?

14          MS. OLIVAREZ: No, Vacaville is absolutely in unique.  
15 We're not like other institutions.

16          SENATOR AYALA: Why is it unique?

17          MS. OLIVAREZ: Because we are a medical facility, and  
18 we're not a programming prison.

19          When I was Warden at DVI, my biggest problems were  
20 getting people to school, getting them to work. My biggest  
21 medical problem had to do with things related years of drug  
22 abuse.

23          As opposed to being in Vacaville, my biggest headaches  
24 are making sure that the medical attention and psychiatric  
25 attention is being given to the inmates. Making sure that we  
26 have people properly diagnosed and in the right treatment  
27 programs. It's totally different than trying to get people into  
28 work and school and that kind of thing.

1           SENATOR AYALA: I also recall that Vacaville was the  
2 first institution to share their property with a local  
3 municipality. They provided a Little League field, as I recall.  
4 I came over to see how that worked many years ago. As I recall,  
5 that was the first facility to share their property with city  
6 and work together to provide services for the general public.

7           MS. OLIVAREZ: Right. And those baseball fields are  
8 still working. They're still playing baseball on those fields.

9           SENATOR AYALA: That's all.

10          CHAIRMAN LOCKYER: Do you have any vacas still?

11          MS. OLIVAREZ: Any vacas at Vacaville? No, I don't.

12          CHAIRMAN LOCKYER: No cows.

13          What's the oldest prisoner you have? How old?

14          MS. OLIVAREZ: Well, I recall meeting someone in  
15 Classification Committee who was about 80.

16          CHAIRMAN LOCKYER: Pretty dangerous guy, I guess?

17          MS. OLIVAREZ: Pretty crazy guy.

18          CHAIRMAN LOCKYER: Hang on to him then.

19          If I could give you \$10 million that you could use  
20 discretionarily tomorrow during this next year, how would you  
21 spend it?

22          MS. OLIVAREZ: I would probably spend it on upgrading  
23 our equipment and perhaps doing some retrofitting of cells.

24          CHAIRMAN LOCKYER: What kind of equipment?

25          MS. OLIVAREZ: I would improve our medical equipment.  
26 There's always new technology. As soon as you buy something,  
27 it's obsolete. There's something better on the market.

28          CHAIRMAN LOCKYER: Retrofitting cells in what way?

1 MS. OLIVAREZ: Well --

2 CHAIRMAN LOCKYER: Inside?

3 MS. OLIVAREZ: The facility was built in -- it was  
4 opened in 1955.

5 CHAIRMAN LOCKYER: So, like remodeling.

6 MS. OLIVAREZ: Right.

7 CHAIRMAN LOCKYER: Interior decorating?

8 MS. OLIVAREZ: Actually, I would try to improve because  
9 technology has improved since 1955.

10 CHAIRMAN LOCKYER: But do you mean the bars and the  
11 electronics? Or, no, you mean the insides.

12 MS. OLIVAREZ: Right now, we don't have electronics.  
13 We've got keys.

14 CHAIRMAN LOCKYER: That's right, you have the big  
15 gates. But that's the kind of stuff?

16 MS. OLIVAREZ: Right.

17 CHAIRMAN LOCKYER: But you don't have the Eureka  
18 problem of guys walking around. They figured out how to open  
19 those. Pelican Bay.

20 MS. OLIVAREZ: Oh, no, I don't. That is one consoling  
21 thing about the old-fashioned way. When you lock it, you know  
22 it's locked.

23 CHAIRMAN LOCKYER: Okay, other questions from the  
24 Members.

25 Mr. Gomez, I note you're here as you typically are,  
26 being a loyal manager supporting your staff. But if you want to  
27 give a speech, you can. If you would like us to just vote aye,  
28 we'll do that.



1 MR. GOMEZ: I'd take the ten million and put it into  
2 substance abuse treatment and keep running the facility.

3 CHAIRMAN LOCKYER: I'm glad you got a commercial in,  
4 thank you.

5 What's the pleasure of the Committee?

6 SENATOR LEWIS: Move confirmation.

7 SENATOR AYALA: Can I ask Mr. Gomez a question?

8 Mr. Gomez, is this the only facility that has less  
9 inmates that capacity can handle?

10 MR. GOMEZ: It has some court orders that limit the  
11 capacity of what it can have, but it's still fairly crowded.

12 I think it's about the only institution in the state  
13 with a gymnasium that is available, where you actually have a  
14 gymnasium. When you have as many psychiatrically ill and as  
15 many people with HIV there, I think the conditions are  
16 appropriate, and we've not pushed the court to try and  
17 particularly relieve this one.

18 It's the most complex facility in the state. I think  
19 Ana's done a real good job having to run the most difficult. We  
20 asked her to go there from DVI because it's a tougher facility  
21 to run.

22 CHAIRMAN LOCKYER: Our notes say it's 136 percent of  
23 capacity, which I guess is pretty good as these numbers go.

24 MR. GOMEZ: Pretty good.

25 CHAIRMAN LOCKYER: We have a motion to confirm.

26 May I record the four of us voting Aye? That'll be it.

27 Thank you very much. Good luck.

28 MS. OLIVAREZ: Thank you very much.

1 CHAIRMAN LOCKYER: We have a couple members of the San  
2 Diego Regional Water Quality Board. I guess we'll take both at  
3 the same time, if Mr. Badger and Mr. Arant are available.

4 Come on up, gentlemen.

5 CHAIRMAN LOCKYER: Hi.

6 MR. ARANT: Hi.

7 CHAIRMAN LOCKYER: I'm trying to save a little time,  
8 but it probably won't work.

9 I guess Mr. Arant, starting alphabetically, if you want  
10 to go first, sir.

11 MR. ARANT: Good afternoon, Mr. Chairman and Members of  
12 the Committee. My name is Gary Arant. I'm Chairman of the San  
13 Diego Regional Water Quality Control Board.

14 I'd like to thank you for the opportunity to be here  
15 today to talk to you about my qualifications for appointment.  
16 If you've reviewed the materials I've forwarded to the  
17 Committee, you realize that I have served three terms on the  
18 Regional Board.

19 In that 12-year period, I've had many opportunities to  
20 use my 23 years of experience as a water resource professional  
21 to deal with a number of problems, issues, enforcement actions,  
22 and to come up with what we feel to be consistently effective  
23 responses.

24 Beyond the realm of permitting, and monitoring, and  
25 enforcement activities, I'm rather proud of our Board's record  
26 in several areas that I think will lead to long-term water  
27 quality enhancement. Water recycling, our region has always had  
28 a strong emphasis on recycling of waste water. Through

1 recycling, we reduce the amount of discharge to water bodies,  
2 specifically the ocean, and we make maximum use of imported  
3 water that comes to our region.

4 We're working on an interesting permit right now. That  
5 happens to be the Santa Margarita River live stream discharge  
6 permit. It'll be a two MGD demonstration program. We're  
7 excited about that.

8 San Diego Bay, we have been involved in the Bay in many  
9 ways. One of the positive ways from the standpoint of  
10 developing long-term solutions to water quality enhancement is  
11 through the Bay Panel, developing and trying to develop a  
12 comprehensive Bay water monitoring program, and incorporating  
13 the capabilities of the Super Computer at UCSD. We think that  
14 will lead to some long-term improvements.

15 We've been coordinating with land-use agencies, trying  
16 to get them to incorporate land use policies that will improve  
17 water quality by preventing storm water runoff to storm water  
18 pollution.

19 We are just now getting to watershed management. We've  
20 had a history at the Region Nine Board of using the opportunity  
21 to take fines, instead of sending them to Sacramento, having the  
22 discharger develop enhancement programs in the region,  
23 remediation programs and enhancement programs.

24 As I say, I'm proud of our record in many areas. But  
25 as you understand, not everybody agrees with my assessment, and  
26 I have been formally opposed by the Environmental Health  
27 Coalition.

28 Over the years, the EHC has consistently been what I



would call an energetic and a well-informed advocate of their membership's point of view on many critical environmental issues. Believe me when I say that they, in my mind, are an integral part of our regulatory process. Their input is noticed and is important to our Board, our Board staff, and the regulated community.

This is my fourth term on the Board. This is the first time I've been challenged by any group, including EHC. I was somewhat surprised at this juncture that I was being challenged. Nevertheless, in their letter to you dated April 4th, 1996, they cited several reasons for opposition, and I've drafted responses to each one of those.

But in summary, I really believe that the basis of their opposition is tied to an honest and inherent difference between their focused perspective and function as an environmental advocate and the broader based purview and responsibility of our Board as an environmental regulator. I believe the existence of those differences is essential for maintaining an open, and balanced, and effective regulatory process.

I'm looking forward to your questions.

CHAIRMAN LOCKYER: Perhaps let me first acknowledge Senator Kelley.

Senator, we got the engine going here before you got out of the garage, but why don't you make any comments that you would wish to at this point.

SENATOR KELLEY: Thank you, Mr. Chairman. I appreciate the opportunity to speak to the Committee today with respect to



1 the two gentlemen that you have before you regarding the  
2 appointment to the Regional Water Quality Control Board in San  
3 Diego.

4 Let me just state that I have worked with both of these  
5 gentlemen for a quite number of years as it comes to the water  
6 issues that we address in San Diego County, as well as some of  
7 the other areas around the State of California.

8 One of the issues, as you are well aware, I carried the  
9 legislation here that addresses water reclamation and water  
10 conservation programs within the State of California. And the  
11 water district that is in the northern part of the County of San  
12 Diego is very supportive of this type of legislation. They  
13 implement the process with regards to the use of reclaimed water  
14 on the orchards, the avocado and the citrus orchards in this  
15 part of the county.

16 Mr. Badger and I, not to belittle the fact too much,  
17 but we attended college together, and we've known each other for  
18 many, many years. We happen to be in the same business, which  
19 is the citrus business, so we've worked together over many, many  
20 years on the issues as it pertains to water, and the fact that  
21 this is a key ingredient as far as the economy of San Diego and  
22 other counties in Southern California are concerned.

23 These gentlemen are well-qualified for the position.  
24 They have tremendous experience to the bring to the position,  
25 and I strongly recommend your reappointment of both of them to  
26 the Regional Board.

27 Thank you, Mr. Chairman.

28 CHAIRMAN LOCKYER: Senator, one of the issues is

1 whether term limits, in its wisdom, ought to apply to jobs like  
2 this. We have people that are starting in their 11th or 13th  
3 year of service with some number of years ahead.

4 What do you think?

5 SENATOR KELLEY: Well --

6 CHAIRMAN LOCKYER: It applies to you and others. The  
7 question is if there shouldn't be a maximum amount of time that  
8 people are on these type of jobs?

9 SENATOR KELLEY: Sometimes it's rather difficult to  
10 find individuals that will sit on these boards because they're  
11 more or less -- they're very time consuming and demanding. The  
12 knowledge that you have to have is rather narrow in scope for  
13 what the issues are that they're addressing. It's going to be  
14 complicated to find someone that has the background and  
15 experience, and is willing to sit on these boards because of the  
16 time involved and the nature of the subject matter that's  
17 brought before them.

18 But I would think that that would be up to someone at  
19 the local level as to whether they should impose some sort of a  
20 restriction on the terms that they would serve, the number of  
21 terms that would be available to them.

22 I personally, as we look at the experience that we're  
23 going through here in the Legislature, what is happening, I'm  
24 not sure that that's the wisest course of action. But here  
25 again, we haven't experienced that long enough here in the  
26 Legislature. We do know what is happening today, but we don't  
27 know what it's going to be like, say, five or ten years from  
28 now.

1 CHAIRMAN LOCKYER: Thank you, Senator.

2 SENATOR KELLEY: Thank you. I appreciate it.

3 CHAIRMAN LOCKYER: Thank you, Senator.

4 We heard you went to college together. We didn't hear  
5 whether you were roommates or something.

6 MR. BADGER: No.

7 CHAIRMAN LOCKYER: We didn't hear the really good  
8 stuff.

9 Maybe an opening would be appropriate. We'll shift to  
10 Mr. Badger.

11 MR. BADGER: Thank you, Mr. Chairman, other Members of  
12 the Committee.

13 My name is Charles Badger, and I reside at 253 Via  
14 Tierra, Encinas, California. I currently am the Vice Chair of  
15 the Ninth Regional Water Quality Control Board, San Diego  
16 Region.

17 I also, as Gary, am appearing before you again for the  
18 first time, but this is the fourth term I would serve. I've had  
19 shortened terms to correct the imbalance in the position to  
20 which I was appointed. At the present time, I serve as the  
21 irrigated agricultural representative on this Board.

22 My background, my university, I hold degrees in plant  
23 pathology and entomology, and I have a citrus grove management  
24 service business in the central north part of San Diego County.  
25 I manage approximately a thousand acres of citrus and  
26 pasturage.

27 My background and training uniquely qualifies me for a  
28 position such as this, especially regarding agricultural



1 chemicals. My formal training is chemistry, and plant  
2 biochemistry, and organic chemistry, and so on and so forth.  
3 I've also done research work at the Citrus Experiment Station,  
4 University of California at Riverside for number of years before  
5 I started in working in my dad's business.

6 Integrated pest management is a term that is now very  
7 much in vogue, and that is something that is -- that we have  
8 developed over the years. In fact, my dad started doing this in  
9 1930, the year in which I was born. In the citrus industry, we  
10 first brought in our vidalia lady bird beetles in 1885, it was,  
11 middle 1880s, and we have found out a long time ago that you  
12 don't have to use chemicals to maintain pest control in citrus  
13 orchards.

14 I have served as the President of the San Diego County  
15 Farm Bureau, the past President of the California Pest Control  
16 Operators. I was involved in some of the basic research work at  
17 the UCR, developing testing of fertilizer requirements for  
18 plants by using plant tissue as well as soil testing, which has  
19 cut the use of nitrogen fertilizers to a tremendous degree,  
20 thereby protecting water quality in the aquifers that lay  
21 underneath the citrus groves.

22 I do agriculture pipe line design engineering, figuring  
23 hydraulic lines, the way to install pipe lines and sprinklers.  
24 In San Diego County, agriculture uses 17 percent of the water  
25 that is used in San Diego County. We have developed some of the  
26 most outstanding methods and ways of irrigating agricultural  
27 crops and still return in excess of one billion dollars of  
28 income to the County of San Diego.



1           The pest control operations that I do, we use no  
2 Category I or II chemicals to spray trees with. We feel that  
3 our employees must be protected. We have been very fortunate  
4 that we can do this with the amount of other works we do, with  
5 release of the predators and predatious insects.

6           I have the marvelous opportunity to bring this  
7 experience, the life-long involvement with the chemical  
8 industry, to a board such as this to protect the waters of the  
9 State of California, and to serve both the citizens of the  
10 state as well as my peers in the agricultural community.

11           CHAIRMAN LOCKYER: Thank you, sir.

12           Let me ask either of you to comment on the contention  
13 that major sources of industrial waste have had permits expired  
14 for any number of years. The one I hear is San Diego Gas and  
15 Electric, but there are some others, I think, that five, six  
16 years, no permit.

17           What's that all about?

18           MR. ARANT: I responded to that issue, and the response  
19 is on the goldenrod color.

20           It is true that we have had a backlog of expired  
21 permits, but let's be clear that expired permit, the  
22 expirations, the renewal date, the permits are still in force.  
23 They need to be updated.

24           We have, through a concentrated effort, reduced our  
25 backlog of expired permits by 47 during fiscal year '94-95. We  
26 anticipate eliminating all backlog permits by December of this  
27 year.

28           But my general comment on that, and over the years of

1 being a Board member, is that if we focus our resources on  
2 bringing forward expired permits, then necessarily something  
3 else will have to be left without the kind of attention it  
4 needs, and then we will be criticized because we have not done  
5 adequate inspections or adequate enforcement. We will then  
6 refocus on something else, and then the thing that we reduced  
7 emphasis on lags behind, and then we're criticized.

8 So, the challenge becomes allocating your resources to  
9 deal with always constantly competing priorities.

10 We have made a concerted effort to bring forward those  
11 permits. I would say that the San Diego permit, we are working  
12 on it. We have been diligently trying to bring closure on that  
13 permit. It involves the South Bay Power Plant. It is a very  
14 complicated issue. It involves very strong differences of  
15 opinion about environmental impacts.

16 It's a very difficult job to bring closure on all these  
17 issues if you can, but we are working on it. We spent about  
18 three hours on it at our last Board meeting last Thursday. So,  
19 it's an issue that we will bring closure to in the next month or  
20 so.

21 CHAIRMAN LOCKYER: Did you want to add anything, sir?

22 MR. BADGER: In my number of years on this Regional  
23 Board, I am so extremely pleased at this point in time of what  
24 our Regional Board is doing regarding the closure of some of  
25 these age-old permits, these NPDES permits held over so long.

26 We did close up 47 of the 53 that are outstanding. We  
27 have five left, and those should be closed by this December at  
28 the latest. All of them, I feel, will be closed.

1 CHAIRMAN LOCKYER: Are there questions from Members?

2 Yes, Senator Ayala.

3 SENATOR AYALA: Yes, I'd like to dwell into that  
4 question about the San Diego industries violation of the  
5 rules.

6 Under what circumstances would you bring an enforcement  
7 action against violators of discharge requirements?

8 After you folks visited with me this morning, I had a  
9 couple people come in and tell me that you were not enforcing  
10 the laws. Some people are getting off the hook without any  
11 reason at all.

12 What is the policy that you have in terms of enforcing  
13 actions against violators of the discharge requirements?

14 MR. ARANT: We took some time to address that. It's  
15 under the light gray sheet in my presentation.

16 The Board takes many types of enforcement actions.  
17 Many of them are informal. In other words, they are handled by  
18 the staff with a phone call or a letter, and the issues are  
19 corrected.

20 Many of the actions do find their way to the Board.  
21 As a matter of fact, between January 1 of 1994 and January 1,  
22 1996, we took 61 formal enforcement actions. We currently have  
23 on the books about \$1.5 million, depending on how you count it,  
24 in fines, and in lieu of fines, mitigation programs in the  
25 region.

26 So, I would say that I would take issue with the  
27 allegation that we don't enforce.

28 Our policy, my view of the policy is that we look at



1 State Board guidance on the enforcement policy, which I think I  
2 described in pretty good detail in my letter to you earlier this  
3 year. We try to avoid fines. We try to get compliance through  
4 cooperative means, but when it does come time, when we see  
5 repeated violations, or we see recalcitrance on the part of the  
6 discharger, then we will resort to administrative civil  
7 liabilities. Those have resulted in fines. Sometimes they even  
8 find their way to the Attorney General and resolution in that  
9 venue.

10 We have had several issues go to court and to be  
11 resolved in the courts.

12 In my view, it's typically where we have repeated  
13 violations, or we have a discharger who is making no real effort  
14 to try to correct the problem that is creating the discharge or  
15 the violation.

16 SENATOR AYALA: Can you name any companies that you  
17 have ordered to cite for major violations, and the amounts that  
18 they've been fined?

19 MR. ARANT: Well, the most recent one was the City of  
20 San Diego, where we had essentially two separate issues that we  
21 resolved with one settlement. The total value of the settlement  
22 was \$1.35 million.

23 SENATOR AYALA: City of San Diego?

24 MR. ARANT: City of San Diego, one million of which  
25 will be utilized for monitoring in San Diego Bay, monitoring in  
26 coastal waters, a pretreatment program, and so forth. And we  
27 think these are important -- and wetlands restoration project  
28 within the region. \$350,000 will come to Sacramento to the



1 Cleanup and Abatement fund, which will be used statewide for  
2 various cleanup programs under the directorship --

3 SENATOR AYALA: Any major companies in that area that  
4 you've cited.

5 MR. ARANT: I have a list of companies that we have  
6 enforcement actions against: Bay City Marine, Campbell  
7 Industries, Chevron, USA Products, City of Chula Vista, City of  
8 San Diego, Solarcraft, Lakeside Land Company, Nielson-Beaumont  
9 Marine, Rainbow Municipal Water District, San Diego Unified Port  
10 District, County of San Diego Solid Waste Division.

11 SENATOR AYALA: These are agencies. Do you have any  
12 private industries?

13 MR. ARANT: Yes, the boatyards that I just named were  
14 private companies. Teledyne, Ryan Aeronautical, U.S. Marine  
15 Corps.

16 SENATOR AYALA: Marine Corps.

17 MR. ARANT: Camp Pendleton has a number of  
18 environmental problems on the base: leaking underground storage  
19 tanks, sewage treatment plants that must be brought up to  
20 standard. So, there's a number of issues.

21 But we've involved a number of private companies and  
22 public agencies in various forms of enforcement.

23 SENATOR AYALA: Thank you.

24 MR. BADGER: Senator, too, I would like to add that on  
25 some of these issues, I have been the Board Member who was --  
26 been somewhat different. I've tried to hold out for higher  
27 fines, specially regarding the City of San Diego. They have  
28 been way overboard, and way out of bounds in some of the actions

1 they have taken.

2 At our meeting when we accepted the \$1.35 million, I  
3 finally voted the rest of my Board members, because they had a  
4 City Councilwoman get up and admit they had done wrong, and had  
5 put in at that time 500-some million dollars, of which they have  
6 spent about 260 million now to upgrade their sewage  
7 infrastructure within the Metro Sewage District.

8 So, they are cleaning up their act. I think we finally  
9 got their attention with this thing. And I reluctantly voted to  
10 support my fellow Board members at that time.

11 CHAIRMAN LOCKYER: I'm looking at a document from March  
12 of '93, U.S. EPA issued a finding, a violation for the City not  
13 having implemented a pretreatment program regarding industrial  
14 users. Lots of complaints in the communication. And then,  
15 shortly after that, a couple months later, the State Water  
16 Resources Control Board sends a memo that says, "It's my  
17 understanding your staff has now determined the City may have  
18 violated numerous discharge requirements in 28 of the last 60  
19 months."

20 Now, that was spring of '93. This is Point Loma, I  
21 guess, one of the issues.

22 Had the issue been raised before the Board prior to the  
23 state and federal environmental and water agencies bringing it  
24 to your attention?

25 MR. ARANT: I don't recall the sequence of events. I  
26 do believe that the issue of Point Loma, and how the sludge  
27 handling and sludge removal were reported, later became the  
28 subject of an administrative and civil liability, which was

ultimately resolved in the settlement that we just completed in February of 1996.

MR. BADGER: Senator, at our Board meeting on September the 27th, 1993, held in the City of Chula Vista, this was an issue at our meeting. It was involved also with the EPA lawsuit we were involved with against the City of San Diego, and a Judge Brewster had much of this going on at the time. We couldn't really get involved in it at that time.

But then, when the sludge thing came up, I felt that it had gotten so far out of hand that we needed to put it into the District Attorney's hands in the City or County of San Diego, one of the two. I have a copy of the minutes there, the audio minutes that shows I asked those questions.

And also, the City Attorney then comes up and tries to get another delay. I kind of treated him maybe a little badly. I told him, if he worked for me, I'd fire him if he kept continually trying to get delays.

The frustration I felt over this whole issue at that time was just -- to me, it was beyond measure. That's why, again, we probably should have fined them more.

I found one thing in this job. It's certainly frustrating. They just don't seem to pay attention sometimes, and we need to get their attention.

CHAIRMAN LOCKYER: That's sort of how we feel up here sometimes, too.

I note that the year before, '92 in this instance, there's a newspaper article that talks about the local Hazardous Waste Task Force. Apparently, they decided to not invite the



1 Water Quality Board anymore because they thought it didn't  
2 really help to have them involved.

3 And I guess there was a specific issue regarding an  
4 investigator that was demoted because he was a whistle-blower,  
5 according to the newspaper story, and turned in some polluter.

6 Does any of that ring a bell? What was that all about  
7 in your view?

8 MR. ARANT: Well, I think I tried to address that in  
9 the green sheets in our presentation.

10 As I recall the issue, the issue had to do with not  
11 whether or not it was a good idea for Regional Board to be  
12 involved with the Strike Force. It had to do with the level of  
13 control that the Strike Force wanted over our employees from the  
14 management level and from the Board level. It also had to do  
15 with the issue of leaving the Regional Board out of the loop.

16 In other words, we were often told that we were -- we  
17 would not be informed on some of these enforcement actions.

18 The issue with the employee had to do with the employee  
19 following through on some directions from the Task Force that  
20 were in direct contradiction to the directions of our Executive  
21 Officer.

22 There were some other issues involved. That, I think,  
23 is what led to the split, if you will, where we were informed by  
24 the Strike Force that we would no longer be involved.

25 I would like to say, though, that today at this  
26 juncture, we are involved with the federal government and  
27 enforcement actions. As a matter of fact, we have taken part in  
28 two recent enforcement actions, one in San Bernardino County,



1 and one in Orange County.

2 Our Regional Board officer and some staff members have  
3 taken training from the federal government on enforcement. I  
4 believe he's the only one in the state that's undergone that  
5 training.

6 So, I think we've resolved some of those issues. We  
7 are involved with the federal government in these types of  
8 investigations. It's a much more comfortable relationship.

9 CHAIRMAN LOCKYER: Let me ask you to comment briefly.  
10 I'm sorry to sort of shot-gun it here, but I'm trying to give  
11 you a benefit of various articles we've accumulated to comment  
12 on.

13 Another is San Onofre, where the Board ruled that the  
14 power plant was not violative of the Clean Water Act. Now, this  
15 story indicates that that was despite recommendations from your  
16 own staff and the conclusion of the Marine Review Committee that  
17 spent 15 years and \$50 million documenting what it claims to be  
18 the major impacts.

19 Any comment on that?

20 MR. BADGER: Yes, Mr. Chairman.

21 I chaired those meetings. We had testimony from  
22 representatives of the power plant people at Songs, from some of  
23 the most imminent people within their fields in the United  
24 States. And on the other hand, we had testimony from other very  
25 imminent scientists within their fields, identical fields from  
26 the other side. We were faced with a dilemma at this point. I  
27 remember it turned on a --

28 CHAIRMAN LOCKYER: It turns out experts have values.

1 MR. BADGER: For both sides. It was something.

2 But it turned on, in my mind, at a juncture when one of  
3 our Board members asked about the amount of kelp that had been  
4 destroyed because the plant was there. He asked this question  
5 because, about four years prior to our meetings, there was a  
6 severe storm that wiped out the kelp. And it had recovered to  
7 such an extent that the kelp was then being -- while we were  
8 holding our meetings, was then being commercially harvested from  
9 those kelp beds. So, our Board members didn't feel that there  
10 could have been much damage by the Songs' operation to destroy  
11 that kelp if, in fact, they were commercially harvesting it at  
12 that date.

13 CHAIRMAN LOCKYER: There probably will be more  
14 questions. Maybe we ought to take a little testimony, if you  
15 gentlemen can give us room here.

16 Anyone present who wishes to comment either for or  
17 against on either side? Let's take the for first, the  
18 supporters.

19 MS. FIGUEROA: Hello. Thank you for the opportunity to  
20 speak here today before you.

21 My name Minerva Figueroa, and I represent the Women  
22 Environmental Council from San Diego. We are the Border  
23 Chapter, and we're divided in other chapters in Orange County  
24 and L.A.

25 CHAIRMAN LOCKYER: What's the chapter?

26 MS. FIGUEROA: Border. It's called Women Environmental  
27 Council, Border Chapter.

28 Our organization is a group of professional

1 environmental women that get together in order to have an open  
2 forum for fair and safe arena to discuss several issues that  
3 have to do with contamination in the environment in the border,  
4 basically.

5 We have seen several efforts from Mr. Gary Arant as for  
6 working with binational and -- binational problems along the  
7 border, putting efforts into problems that have to do with waste  
8 that locally we are very concerned about. We have seen his  
9 credentials, and we believe that after 20 or so years working in  
10 the field, he's a very qualified candidate.

11 And my presence here is just to respectfully urge you  
12 to reappoint Mr. Gary Arant for that position.

13 CHAIRMAN LOCKYER: Ms. Figueroa, let me ask you to tell  
14 me a little about the nature of your work so I can understand  
15 the kind of group you have.

16 MS. FIGUEROA: I'm an environmental consultant, and I'm  
17 part of the Women Environmental Council in San Diego.

18 CHAIRMAN LOCKYER: So, are you an independent business,  
19 or do you work --

20 MS. FIGUEROA: I'm an independent consultant.

21 CHAIRMAN LOCKYER: Who would be an example of a client?

22 MS. FIGUEROA: For my company? We work for -- we offer  
23 research information for Natback, for example, and Beck, which  
24 are international organizations that are designed to find  
25 accurate and honest data to evaluate projects along the border.

26 We provide official census and official statistics of  
27 health, environmental pollution, demographic and economic data  
28 in the border, so they can make a good assessment whether a

1 project should be approved or not.

2 CHAIRMAN LOCKYER: Were these government organizations  
3 you mentioned?

4 MS. FIGUEROA: That is correct. They're binational --  
5 well, they're confirmed by --

6 CHAIRMAN LOCKYER: By treaty or whatever?

7 MS. FIGUEROA: By officials representing each country.

8 CHAIRMAN LOCKYER: How about in the private sector?  
9 Would you have clients of that sort as well?

10 MS. FIGUEROA: We have not had any private clients in  
11 that sector yet.

12 CHAIRMAN LOCKYER: Thank you very much for being with  
13 us.

14 Mr. Cologne.

15 MR. COLOGNE: Gordon Cologne. I'm here to support both  
16 these candidates.

17 Let me explain that up until about two years ago, I  
18 lived in north San Diego County. First of all, I should explain  
19 that Mr. Badger is a ranch manager and did handle our lemon  
20 grove for us. And I watched his operation, I know that he is  
21 not an advocate of using pesticides and so forth. He's a very  
22 strong person as far as the environment goes.

23 CHAIRMAN LOCKYER: You have a lemon grove?

24 MR. COLOGNE: Yes, I had one. I've finally been able  
25 to sell it. I must confess that it is not a large lemon grove.  
26 It consists of one acre of lemons, 108 trees.

27 But I take the job seriously. We shipped through Sun  
28 World, and put it on the market in same manner as if you had a



1 thousand acres. We're very proud of the kind of lemons that we  
2 produce for the economy.

3 But in any event, I want to say that I know Mr. Badger,  
4 how he operated and insists on bringing in wasps and other  
5 predators of these pests, rather than the use of pesticides.  
6 So, I know that aspect of his work.

7 Secondly, I have a great deal of respect for his  
8 background experience. You've heard a little bit of it here.

9 But the one thing I want to say with regards to both  
10 these candidates is, first of all, you, I think, appreciate more  
11 than anybody else the limitation on funds. And some of the work  
12 hasn't been done as fast as we'd like it, but I will tell you  
13 this much, that the whole Board is dedicated to clearing up this  
14 backlog and getting things up-to-date. It hasn't been easy with  
15 the limited amount of money that's available and the demands  
16 that are on this particular board.

17 I've watched that Board work. And one thing that I  
18 think is important is, number one, they are trying to enforce  
19 that very famous or infamous, which ever way you're looking at  
20 it, Porter-Cologne Water Quality Act.

21 CHAIRMAN LOCKYER: I don't know who wrote that thing.

22 MR. COLOGNE: I don't know, either, but it has been up  
23 dated recently through the good work of the Legislature, and so  
24 it isn't as bad as it was when it was written. You have to know  
25 that.

26 But secondly, and most importantly, is, they have taken  
27 an attitude that the job is to be corrected, the errors. And  
28 when I was down there, I saw the City of San Diego, their

1 pollution in the Bay and various other places as a result of an  
2 aging sewage line. I've seen the work that's gone on in court  
3 with that problem.

4 And that problem isn't the problem existing today from  
5 the present mayor. It isn't the job that was created by the  
6 previous mayor, nor the present governor when he was mayor.  
7 These are jobs -- are problems that have been created over the  
8 years and as a result of neglect. There's no question about  
9 it.

10 Now, the question is, should the taxpayers pay a  
11 horrendous fine right now, or should that money from the present  
12 taxpayers, who would have to pay any kind of an assessment, go  
13 into fixing the problem, building up a good sewage treatment  
14 system.

15 Now, that battle has been going on in court, but right  
16 now, the issue is, should we fine them and put money into  
17 Sacramento to be spread around among all the people, or should  
18 we make them comply by bringing up to date their system, and  
19 making them spend the same amount of money.

20 Now, they did assess a fine here, but in addition to  
21 that, they made them put money into upgrading the system, which  
22 serves the community right now. It's bringing to a head faster  
23 the cure for this pollution problem.

24 I have the greatest respect for this Board. I know  
25 there are differences of opinion that people have when they  
26 can't get their way as to how this Board should act. But the  
27 Board has to act in a reasonable fashion with the funds that are  
28 available, doing the job to cure that.

1 Now, some of the problems with EPA go way back, and I  
2 know that they have been battled in court. And I haven't  
3 followed it in the last two years, but before that, I saw this  
4 go around and around, and I saw the work that the Board members  
5 put in on helping work out a solution to this problem, the time  
6 they spent in working with the City, along with the staff, to  
7 get a reasonable solution and stop those incidents of pollution  
8 that was going on.

9 So, I think that this Board is doing the kind of job  
10 that you'd want them to do. They don't always make the same  
11 decision that you'd make, but you know from your work here, you  
12 can't always agree with everybody on everything.

13 But I think the Board members have done a good job down  
14 in San Diego with all the problems that they've had in the Bay,  
15 and I think these two people are particularly well qualified to  
16 serve on that Board as the representative of the agricultural  
17 industry, and the other one is here representing water quality.

18 Those are the kind of experts we want on those regional  
19 boards. Understand, they're not getting paid for that job, a  
20 hundred dollars a meeting, but they're giving their expertise,  
21 and I think that we're getting good bargain. These two people  
22 are really worth a lot more than we could ever hope to pay them  
23 for the service they are providing.

24 Thank you.

25 CHAIRMAN LOCKYER: Thank you.

26 Yes, sir.

27 MS. WARMERDAM: Mr. Chairman, Members, my name is  
28 Mary-Ann Warmerdam. I represent the California Farm Bureau.



1 Today I'm here on behalf of the San Diego County Farm bureau as  
2 well.

3 I think Judge Cologne has more than adequately stated  
4 the case for both gentlemen. I would just like to reiterate our  
5 support for their reappointment and urge you gentlemen to vote  
6 likewise.

7 CHAIRMAN LOCKYER: Thank you.

8 MR. HALL: I'm Steve Hall. I'm with the Association of  
9 California Water Agencies. I'm here in support of Gary Arant.

10 My contact with Mr. Arant is as a professional in water  
11 management. He is the manager of one of our member agencies,  
12 and has for over 20 years, been in charge of water management  
13 systems in various parts of the state.

14 I've come to know Mr. Arant as a person who's well  
15 versed in the technical aspects of water management and waste  
16 water management, but he's also a creative and innovative  
17 individual who is genuinely interested in solving problems.

18 I think if you look at Mr. Arant's responses to some of  
19 the criticisms, both his written responses and as you heard his  
20 verbal responses today, he is a thoughtful person. He has well  
21 measured, moderate responses. He is essentially the kind of  
22 person who takes principal stances and seeks to solve problems,  
23 reflecting the needs of the entire community.

24 I think former Senator, and Judge, and reluctant lemon  
25 grower, Gordon Cologne, said it as well as anybody: we need  
26 people in these kinds of positions that are of that ilk. And I  
27 don't know of any area of the state where it is more needed than  
28 in the San Diego County region. The waste treatment plant



1 problem in San Diego, for instance, went all the way to the U.S.  
2 Congress for solution. These are not easy problems to grapple  
3 with.

4 We need people who are technically competent and who  
5 seek to solve problems in the approach, rather than taking a  
6 harsh or narrow point of view.

7 We urge respectfully the Committee to recommend  
8 Mr. Arant for reconfirmation.

9 CHAIRMAN LOCKYER: Thank you, sir.

10 I think there may be some opposition comment, whom ever  
11 would wish to come forward with that.

12 MR. IREY: Good afternoon. My name is Michael IreY,  
13 and I'm a licensed mullet fisherman fishing south San Diego  
14 Bay.

15 In recent years --

16 CHAIRMAN LOCKYER: What kind of fish?

17 MR. IREY: Mullet. In fact, I have a picture that  
18 perhaps I could circulate for you people that will give you an  
19 example of diseased fish I've been finding in my catch  
20 recently.

21 I presented several of these fish in March to the  
22 Regional Water Control Board, and urged them to do something  
23 about the discharge of chlorine in the Bay by San Diego Gas and  
24 Electric.

25 The first question that the Board asked me is what I  
26 was doing back there, which really disgusted me. I mean, I'm  
27 licensed to be back there. I serve ethic the community. I'm  
28 their only conduit to fresh fish in San Diego.

1           There's very few of us commercial fishermen left. I  
2 don't feel that the Board is adequately protecting Bay waters.

3           This permit has been overdue for six years. They  
4 haven't done anything. They just last week put it off for  
5 another month. They've had plenty of time to do this.

6           Recently they were asked --

7           CHAIRMAN LOCKYER: You think this specific problem  
8 might be related to the Edison chlorine discharges?

9           MR. IREY: It's San Diego Gas and Electric.

10          CHAIRMAN LOCKYER: I'm sorry, yes.

11          MR. IREY: I don't know. No one's done any scientific  
12 research.

13          I'm merely presenting these fish as evidence that the  
14 Bay's in trouble. We can't afford to keep dumping pollutants in  
15 the Bay. San Diego Gas and Electric is the last major polluter  
16 of the Bay, and they're doing this on essentially an expired  
17 permit. This is a permit that was issued in the 1980s. We're  
18 now in the 1990s. This Board hasn't done its job.

19          I don't think anyone on the Board deserves  
20 reappointment. I think rejecting these two individuals would be  
21 a good start.

22          In fact, I'd like to read to you from my gill net log  
23 from 1991, 1/29, and this hasn't done much to help my business.  
24 In the comment section I put, "One jack had a cataract in one  
25 eye. This eye was also perferrated. The other jack had burned  
26 skin. I suspect it was chemical burn."

27          The fish were taken directly in San Diego Gas and  
28 Electric exhaust water.

1 "I'm constantly harassed by San Diego Gas and Electric  
2 security while fishing back here. I suspect heavy discharge of  
3 chlorine, fluoride, and who knows what else. There are too many  
4 diseased fish in this area, and almost 100 percent of the  
5 abnormalities are from this small area. What are they trying to  
6 hide."

7 "Also, whenever I fish close to the exhaust, my stomach  
8 or whatever else gets wet is very red, sometimes mild rash at  
9 end of my trip. This condition disappears after several hours,  
10 and I haven't noticed this condition from anywhere else in the  
11 Bay."

12 I'm concerned, as is anyone else who might be  
13 purchasing my fish, that --

14 CHAIRMAN LOCKYER: How many years have you been  
15 fishing?

16 MR. IREY: I've been fishing commercially 22 years, and  
17 I've been permitted to fish in south San Diego Bay since 1985.

18 CHAIRMAN LOCKYER: Did you notify anyone with  
19 responsibilities for enforcement?

20 MR. IREY: Sure. This is submitted to the California  
21 Department of Fish and Game on a monthly basis. This particular  
22 gear type was terminated under authority of Proposition 132, and  
23 so now I have switched gear to a lampara gear, and it's no  
24 longer required to keep a daily log of this. I'm the last guy  
25 who's fishing these.

26 Recently, the Board was asked to delay the transport of  
27 dredging spoils from the Navy that were potentially contaminated  
28 with dioxin. They were asked to delay this for a month to do



1 further studies. The Board rejected that and went ahead and  
2 approved this project.

3 It seems to me that they're very selective in the  
4 things that they want to go forward on. Why has it taken six  
5 years on this, and especially when you see the condition of some  
6 of these fish back there?

7 CHAIRMAN LOCKYER: Thank you, sir.

8 MR. OLSEN: Good afternoon, Members of the Senate,  
9 Chairman Lockyer. My name is Lee Olsen. I'm a resident of San  
10 Diego. I'm also the past president and current Chair of the  
11 Education and Conservation Committees for the San Diego Council  
12 of Divers.

13 Bottom line, I'm a sport diver. I'm not an  
14 environmentalist. I'm a user of the ocean.

15 One of the provisions both in the Porter-Cologne Act  
16 and the San Diego Basin Plan, and the California Ocean Plan  
17 which sets forth water quality standards for the ocean, is to  
18 preserve the beneficial uses of the ocean. And diving,  
19 recreational uses, is certainly one of the major ones in San  
20 Diego. In fact, our economy in San Diego is based on  
21 recreational use of our beautiful beaches.

22 The problem is that we've been subjected to ongoing  
23 pollution from the operation of the City-run metropolitan waste  
24 water system.

25 My personal experience with it began in '83, when  
26 diving off Point Loma, I surfaced through some unusually colored  
27 water which had white flocculant material in it. I asked a  
28 scientist friend of mine what that was, and he told me it's the



1 plume from the outflow. I said, what do you mean?

2 I remember back in the '60s when they put that in, that  
3 stuff was going to stay down at 200 feet, and wouldn't bother  
4 divers or fishing or anything.

5 He sent me to the Regional Water Quality Control Board,  
6 where I examined something called Receiving Water Reports, and I  
7 learned a new term, TNTC. When the bacteria counts got too high  
8 that the tests they were performing couldn't tell how high it  
9 was, they just put down TNTC, for "too numerous to be counted."

10 And since that time, I've been involved in looking at  
11 water quality issues that affect our sport.

12 This Board consistently --

13 CHAIRMAN LOCKYER: How often would you see that entry?

14 MR. OLSEN: Today? Today it's actually been improved,  
15 because the Point Loma outfall has been extended. It discharges  
16 into deeper water, and based on a number of factors, the Point  
17 Loma plant is now operating slightly above standard, versus  
18 below standard, which was the case in 1983.

19 How did we get there? When EPA brought suit against  
20 the City of San Diego for violating the Clean Water Act, Judge  
21 Brewster reviewed the record of enforcement by the Regional  
22 Board. It was a whole litany discharge permits, cease and  
23 desist orders, agreements by the City of San Diego to upgrade  
24 the system, you know, compliance dates that were continually  
25 missed. He characterized the City of San Diego as being a  
26 scofflaw.

27 But the other question is, why didn't the regulatory  
28 process work? Where were the orders? Why weren't the orders

1   enforced?

2           Even today, just two weekends ago, we were doing a  
3   safety program that we do for free with the San Diego City Life  
4   Guards, and where we take drivers on skin diving tours of local  
5   beach areas. We curtailed our safety program because there had  
6   been another spill at Wind and Sea Beach, part of the La Jolla  
7   beaches, adjacent to a pump station where they were having  
8   repeated spills over the years.

9           Now, this isn't a new problem. If we take a look at  
10   the sewage spills, for example, all of Los Angeles County, all  
11   of Orange County, all of Riverside County, and we add together  
12   the number of spills reaching ocean waters, and the volume of  
13   sewage reaching ocean waters, guess what? It is substantially  
14   below the annual discharges in the San Diego region.

15           One of the former EPA Administrators from the Midwest  
16   made a comment at an administrative and civil liability hearing  
17   in which the settlement agreement that Mr. Arant referred to was  
18   discussed. He couldn't understand why the Regional Board wasn't  
19   taking enforcement action, because he saw the difference in his  
20   own region between when you took fair but firm enforcement  
21   action against a major discharger and when you did not.

22           He typified what we see in San Diego County today as a  
23   case where, over the years, the City has essentially found it  
24   easier to delay, to avoid compliance, to fail to meet their  
25   agreements, essentially be a scofflaw, and get away with it  
26   because of lack of enforcement at the regional level.

27           I see the -- unfortunately, I see regulatory process is  
28   broken and needs to be fixed in San Diego. Perhaps -- I know

1 Mr. Badger and Mr. Arant are well-intentioned. They're good  
2 men. But perhaps they've been in their current positions too  
3 long, and it's time for change and getting some new perspectives  
4 in San Diego at the Regional Board level.

5 When we go to the polls, we elect the governor, we  
6 elect members of the Senate, members of the Assembly. And we  
7 look to the Governor's Office and this body to appoint people to  
8 regulatory boards to administer the regulations fair, not to the  
9 advantage of a diver, or someone that has a particular  
10 environmental bend or twist, a fisherman or a discharger.

11 But the laws, basically, to begin with, are  
12 compromises, and so are the regulations. You can't foresee  
13 every circumstance.

14 But when we see in San Diego sewage spill, after sewage  
15 spill, after sewage spill, without enforcement, and in the case  
16 of, you know, the capital improvements that were mentioned by  
17 Mr. Arant, those weren't improvements that were ordered by the  
18 Regional Board. Those were improvements that, finally, EPA  
19 forced out of the City, because they had to take the City of San  
20 Diego to federal court to get them to comply not only with the  
21 Clean Water Act, but with the receiving water requirements of  
22 the State of California and conditions of the permit issued by  
23 this Board.

24 So, I could go on, but I ask you to consider not  
25 reappointing these two members to the Board, and to -- perhaps,  
26 we might see a fresh wind in the Board and a new direction,  
27 where we'll see more fair and firm enforcement, and fewer sewage  
28 spills and water pollution problems in San Diego. Particularly



1 I'm biased for the recreational diver who sees them everyday  
2 they go into the water.

3 Thank you.

4 CHAIRMAN LOCKYER: Next.

5 MS. HUNTER: Good afternoon, Senators. My name is  
6 Laura Hunter. I'm here today to represent the Environmental  
7 Health Coalition's opposition to the reappointment of  
8 Mr. Charles Badger and Mr. Gary Arant to our San Diego Regional  
9 Board.

10 As Gary said earlier, and I agree with him, we have a  
11 very serious difference of opinion and a difference in  
12 expectation. We have not opposed them, these two members,  
13 before. But we're here today because we don't know what else to  
14 do.

15 We are very frustrated. The situation, not only does  
16 it stay the same, it continues to get worse. And while these  
17 are Governor appointments, it is up to the Senate, as you know,  
18 to reconfirm them. And we're asking for your help to get a  
19 change in San Diego. What we have now is absolutely not  
20 working.

21 As you know, we have monitored the Regional Board for  
22 the last nine years. It is our conclusion that after many years  
23 of trying to work with the system -- we believe in dealing with  
24 the hand that you are dealt -- but we can no longer deal with  
25 these cards. We need some new ones.

26 We have come to the conclusion that adequate water  
27 quality protection is not possible as long as this old guard on  
28 the San Diego Regional Water Board remains.



1           We oppose these reappointments because the record of  
2 the Board demonstrates a chronic unwillingness to enforce the  
3 law that you have charged the Board to uphold.

4           We do not undertake this lightly, and we understand the  
5 seriousness of our actions. We are here because we are  
6 frustrated. We are afraid for our region, and we don't know  
7 what else to do.

8           I don't want to just give you generalities. I have  
9 given you exhibits of eight or nine specific votes in which the  
10 public interest and the public health was compromised as a  
11 result of the votes of these Board members.

12           Exhibit number one relates to the Paco Terminals  
13 cleanup. San Diego Bay has very serious, multiple contaminated  
14 sediment problems. After intense pressure, the Board did -- and  
15 I even think a Senate hearing -- the Board issued a series of  
16 cleanup and abatement orders. One of the worse sites we had was  
17 Paco Terminals.

18           On December 9th, 1991, both Mr. Badger and Mr. Arant  
19 voted to weaken the level of cleanup at Paco Terminals by four  
20 fold. We appealed that order, and we prevailed on that order.  
21 The State Board found they had no technical basis by which to  
22 weaken that cleanup level.

23           I was concerned, because their representative, who  
24 represented the Board at the Senate hearing, I believe, was Mr.  
25 Badger, and the feeling was, basically, they just had worn us  
26 out. We wanted to get it over with. That is not the basis or  
27 an acceptable reason to weaken a clean up order.

28           Exhibit number two relates, as we've already discussed

1 a little bit, about the Strike Force. EHC is not the only  
2 agency that has recognized lack of will to enforce on the part  
3 of the Board. The FBI removed them from the task force.  
4 They've been the only agency, to our knowledge, that has ever  
5 been removed; regulator that has ever been removed from the  
6 task force, any agency, in fact.

7 Cal EPA wrote them a letter, and even visited the  
8 Regional Board, saying, we really want you back on that task  
9 force. It works well. It's a good deterrent. We want you to  
10 participate.

11 To date, they have not been reinstated. This exhibit  
12 also includes a copy of the Auditor General's report from 1987.  
13 I know that's long time ago, but it's still true today. Their  
14 cooperative strategy of asking people, "Pretty please, comply  
15 with your permit," does not work.

16 Nothing has changed. We did a review of compliance.  
17 We found that we were getting about one percent enforcement of  
18 violations. To us, it is our view that was not adequate.  
19 Because they have not changed their strategy that isn't working  
20 then, it's still not working now, they haven't changed their  
21 attitude, this is why we're asking you to change them.

22 CHAIRMAN LOCKYER: What does the one percent represent?

23 MS. HUNTER: Well, we went through 19 of the NPDS  
24 permit holders around the Bay. We found 222 violations, two  
25 fines had been imposed. This was the five years ending in 1991.

26 CHAIRMAN LOCKYER: That's the fine policy.

27 MS. HUNTER: Well, that's the fine reality. I don't  
28 know what the policy is at this point.

1 Exhibit number three. The permissiveness that the  
2 Board has showed with the City of San Diego is as appalling as  
3 it has been destructive to our region. Here are, I think, some  
4 very revealing facts about the behavior of the City of San  
5 Diego.

6 They violated their permit for 28 out of 60 months.  
7 40,000 dry weight tons of sludge went over in their permit limit  
8 into the ocean. Please don't confuse this with the dealings  
9 about the secondary sewage. This is just, you got a permit;  
10 you're dumping 40,000 tons over the limit; that's bad. They  
11 should have done something about that.

12 Pretreatment program at that point had 35 percent  
13 compliance when it state took it over. You remember the very  
14 famous Point Loma sewage break, when the affluent met the  
15 effluent over the America's Cup. Beaches were closed for four  
16 months.

17 EPA found that the City had misused the funds regarding  
18 their repair. We've had 3700 sewage spills in a seven-year  
19 period, 86 million gallons untreated sewage going directly into  
20 our surface waters. In one six-month period, we had 197 sewage  
21 spills.

22 What has the Board done to address this?

23 And I agree, belligerent, recalcitrant, very badly  
24 acting the City of San Diego relative to the sewage treatment.  
25 One thing they did was this. Mr. Badger voted, on September  
26 21st, 1992, to allow the City to keep the report about what  
27 caused the break secret. It took a state legislative action by  
28 Assemblyman, at that time, Steve Peace to get that report



1 released. That is very improper. That's a disclosure thing  
2 that we, as users of the ocean waters, deserve to know what  
3 caused that break. They wouldn't have let us have it.

4 The Board also allowed the City to avoid installing  
5 required sludge beds for six years and didn't fine them.

6 Now, I do take issue with this idea about, well, as  
7 long as they just do it, wouldn't we rather have the money go  
8 for upgrading the sewage treatment. Of course we would. The  
9 problem is that they told the City to do it six years earlier.  
10 The City refused. The City played games. The City didn't do  
11 it. Then, when finally we catch them, there's 40,000 tons of  
12 sludge in the ocean later, the City goes, "Oh, gosh, we'll do  
13 it. We promise we'll do it. It's too little too late. They  
14 have not learned their lesson.

15 Although the Board has issued some token ACLs, very  
16 often the moneys are held, and they suspend the fines. You  
17 don't have to pay it, so what's the difference.

18 In fact, on April 25th, 1988, Mr. Arant and Mr. Badger  
19 voted to support the City's appeal of their very own ACL. That  
20 meant they sent a resolution to the State Board, saying, "Please  
21 overturn our ACL. We support the City's position on this now."  
22 So, they do not stand behind those very few enforcement actions  
23 that they take.

24 Finally, soon after hearing that, some of you remember,  
25 we were here. Mr. Roberti was very clear. He wanted to see  
26 some improvement in San Diego. Mr. Badger and Mr. Arant voted  
27 an ACL of \$830,000 against the City, and even referred it to the  
28 District Attorney for possible criminal prosecution. It was a



1 great step, and we applauded it.

2 Unfortunately, they reversed themselves on  
3 December 14th, 1995. They backed down and took what we view as  
4 a very token settlement for all of the spills and violations  
5 made from the City during this period.

6 Particularly offensive was an in-kind offer accepted by  
7 them to settle the sludge dumping. The Board agreed to withdraw  
8 the fine for an undefined in-kind pretreatment project that we  
9 still don't know what we're getting. The City said it's worth  
10 \$250,000. I don't know what the independent mechanism is to  
11 verify exactly what it is.

12 This kind of settlement is a travesty. They're not  
13 learning their lesson from this. If deliberate and chronic  
14 violations such as these do not deserve a fine, we must ask what  
15 does.

16 I want to point out that the same day the settlement  
17 was agreed to, the same day the council person got up and said,  
18 "Oh, gosh, we've been bad. We'll never do it again." They were  
19 taking Scouts honors, and crossing themselves, and doing every  
20 hoop they could jump through to try to convince this Board  
21 they'd never, never spill again. There was another spill that  
22 same afternoon or early the next morning at Penasquitos Lagoon,  
23 and it just continued on the very same way.

24 I have to say, I'm particularly disappointed in  
25 Mr. Badger's support of the settlement. As you heard, I believe  
26 he knows they've been bad. I believe he's frustrated with  
27 them. He had spoken very strongly in prior meetings that he'd  
28 had it with the City. They're belligerent; they're not doing

1 what they were supposed to do. And then, he went and he  
2 supported the settlement. When Board members are voting against  
3 -- what it sounded like to me -- was Mr. Badger's conscience,  
4 and maybe he can speak to that again, I don't know how we're  
5 ever going to get ahead in that case.

6 Exhibit four, no big surprise that San Diego leads  
7 California in contaminated beaches. Now, before you start going  
8 and blaming Mexico all of a sudden, if you look at the list that  
9 I've given you on number four, a very small percentage of our  
10 beach closures come from Mexican sewage. Only one of our three  
11 permanent closures is from the border. The others are in  
12 Oceanside. That's not Mexico doing that to us. That's us, or  
13 rather, our Regional Board doing it to ourselves. We have a  
14 responsibility to deal with that.

15 If we don't do anything about this, these beach  
16 closures will continue in San Diego to rise. We don't want to  
17 have that award for the State of California.

18 CHAIRMAN LOCKYER: How much time of the year, how many  
19 days of the year, would you estimate there are beach closures in  
20 recent months?

21 MS. HUNTER: I don't know in recent months. That's  
22 from the report that just came out. I know that there's  
23 something like 70 to 90 days, depending where you are in the  
24 year. I think Mission Bay had closures of around 90 days, south  
25 had around 70 days, so it's a big chunk of the time. And there  
26 are three permanent closures, meaning you never get to go swim  
27 there.

28 CHAIRMAN LOCKYER: Where are they?

1 MS. HUNTER: Two in Oceanside and one near the border.

2 CHAIRMAN LOCKYER: What's the cause of the Oceanside?

3 MS. HUNTER: I think it's bacterial and other problems  
4 coming out of the -- I think it's the Santa Margarita no, Loma  
5 Alta Lagoon and San Luis Rey. So, it's just this chronically  
6 poor water quality.

7 CHAIRMAN LOCKYER: A discharge that would be the cause,  
8 a specific one?

9 MS. HUNTER: I don't know that. I can find that out if  
10 you want to know.

11 CHAIRMAN LOCKYER: I'll get an answer right now.

12 Do you know?

13 MR. ARANT: We believe the source of discharge,  
14 numerous source points. In some cases during spring water  
15 runoff, also septic tank discharge. That tributary covers an  
16 area that is serviced by a site specific sewage disposal unit.

17 CHAIRMAN LOCKYER: Thank you.

18 MS. HUNTER: Exhibit number five, the nonprotective  
19 votes they've made go back many years. On July 3rd, 1987,  
20 Mr. Badger voted to allow the Van Tol Dairy to continue to  
21 pollute a drinking water aquifer, in spite of neighboring  
22 residents' protests and valid concerns about their drinking  
23 wells.

24 Mrs. Close was here at the last hearing. Some of you  
25 may remember her.

26 Van Tol had filed none of their monitoring reports, and  
27 the Board allowed them to expand their already out of compliance  
28 operation. This is not the kind of representation we deserve,



1 even from the irrigated agriculture representative.

2 Exhibit number six. On February 10th, 1992, Mr. Badger  
3 and Arant voted, in spite of compelling evidence to the  
4 contrary -- and I understand that Edison's consultants got up  
5 and said, "Oh, no. It's really okay," but there was very  
6 significant study and effort that went into documenting  
7 significant degradation of ventic species and a number of other  
8 issues at San Onofre power plant. The Board found they were not  
9 in violation of their permit.

10 We all agree that energy generation is important.  
11 However, power plants, cities, these kinds of agencies were not  
12 exempted from discharge requirements and discharge permits in  
13 the Porter-Cologne Act, and the Board should not exempt them  
14 from this, either.

15 Exhibit seven, the dischargers in our region have  
16 learned that foot dragging and what I call the "I don't wanna"  
17 defense works very well on the Board, and they exploit their  
18 leniency constantly. On October 2nd, 1992, Mr. Arant and Badger  
19 voted to uphold the permit to the Eastern Municipal Water  
20 District. It was so improper that EPA was forced to come and  
21 take the permit over and make a protective of water quality.

22 At issue here the phosphorous and toxicity limit. An  
23 EIR was conducted with a level of one part per million  
24 phosphorous. On the Friday before the hearing, Eastern informs  
25 the staff, "Well, you know, we actually wanted to be 2.5 to 3  
26 over the weekend." They could only meet four parts per million  
27 limit for an unknown reason.

28 Even though the EIR had been conducted on one, the



1 Board gave them a permit with four. The EPA came in and had to  
2 take it over.

3 Another example on October 12th, 1995, they voted to  
4 suspend a successful monitoring program, thus undermining a  
5 five-year sediment monitoring effort. Although they did request  
6 action in 90 days, and we supported that, it's now been ten  
7 months. Guess what? There's no sediment monitoring program,  
8 and there's no alternative program. And guess why? The  
9 dischargers are dragging their feet, seeing just how much they  
10 can get away with, and the Board members are letting them.

11 When we first all entered into this agreement, it was  
12 let's tweak the sediment monitoring program so it works better  
13 for everybody. Now the dischargers in the meetings are going,  
14 "Oh, no. We don't want to do any sediment monitoring, and we're  
15 going substitute it for all this kind of feel-good kind of  
16 stuff." That's not acceptable. We've had to appeal that  
17 decision.

18 What was troubling about the action to suspend the  
19 sediment monitoring program is that the staff had said it is  
20 very valuable. It will help us find those expensive cleanups  
21 before they occur and fix them.

22 They took their action on no apparent credible  
23 evidence, and the action punished those permittees that had  
24 completed the round of sampling required by law.

25 When permit requirements can so easily and erratically  
26 be reversed, a disincentive is created for dischargers to invest  
27 resources to comply with the law. It sends the message that if  
28 you spend the money to comply with our water laws in San Diego,

1 you're stupid, because it costs money, absolutely agreed. But  
2 when it can just turn around just like that, it is a bad  
3 business investment to comply with the law.

4 When we left that meeting, I asked one of the boat  
5 yards, I said, "Well, aren't you sorry that you did that round  
6 of sediment monitoring?" He said, "Yeah, I am." I said, "Don't  
7 you feel like a fool?" He said, "Yeah, I did." He complied  
8 with the law, and he was punished as a result of that.

9 Unfortunately, the recent voting record is not much  
10 better. Exhibit eight discusses the Navy dredging spoils that  
11 are going to go from the Bay onto the beaches. Mr. Craven had a  
12 bill to get some moneys from the state to pay for putting the  
13 sediments on that. We worked with his office and had additional  
14 radiation and dioxin testing done, which had not been done, on  
15 the stuff that was going on our beach.

16 I'm assuming he did that, because he wanted to be sure  
17 that it was safe and it was a good idea. On March 14th, 1996,  
18 Mr. Badger and Arant voted to refuse our request for a  
19 continuance of one month to give an independent consultant a  
20 chance to finish his review. The public has a right to expect  
21 that when they go to the beach, it will be poison free.

22 Instead, they relied on the Navy's consultant to  
23 independently certify the sediments as safe. And of course, the  
24 Navy said it was safe. They have a conflict of interest. They  
25 have a dredge spoils disposal problem.

26 Dr. Fred Youngs -- we finally did have to pay our own  
27 money. We got another consultant that wasn't Navy related to  
28 look at it. He's a Ph.D. in chemistry from Columbia. You have

1 the findings in back; it's the last one I've had. And he states  
2 in his report, "It's my conclusion placement of dioxin  
3 contaminated sediments," and we knew there is dioxin in it.  
4 That's not up for debate -- "on San Diego area beaches would  
5 pose an unnecessary and avoidable health risk."

6 The Regional Board's staff said to us they didn't view  
7 it was their responsibility to make a determination whether it  
8 was okay for dioxin contaminated sediments to go on; just to  
9 certify that the tests were done. Well, that was not the intent  
10 of the legislation.

11 Votes are not the only way that our water quality gets  
12 undermined, and I'll move quickly because I know we want to  
13 move ahead. But I do want to touch on this issue about the  
14 expired permits.

15 The major shipyard permits, all of them, their permits  
16 have been expired for five years. That is a complete cycle.  
17 The law says you renew that permit every five years to update,  
18 to improve, to get better water quality. We missed a complete  
19 cycle on those. And SDG&E, as you know, it's been expired for  
20 six years.

21 I do want to point out that SDG&E likes their permit a  
22 lot the way it is. It's an ancient relic. It's a dinosaur  
23 permit from the mid '80s. Industrial processed waters are going  
24 directly into the Bay, chlorine is being discharged directly  
25 into our south, a very sensitive and productive fishing area.  
26 They like it. I think it's in their interest to delay and drag  
27 their feet. Once again, exploit the good natures, in a way, of  
28 the Board members. But you've got to -- we can't have that.



1           Although Naval facilities submitted their applications  
2 for permits in 1991, no permits have been issued, none are in  
3 draft that are out for review that are going to happen by  
4 December. Forget it. They're not even -- they're not even  
5 under serious discussion at this point.

6           We could go on. The bottom line is this. This kind of  
7 enforcement record should not be rewarded with reappointment.  
8 This is a long-standing problem that will not go away until you  
9 send a message that this is not acceptable. We need new  
10 appointments.

11           I think we've been over the rest of them. We're just  
12 asking you to deny their confirmation. Send a message that you  
13 want clean water. You want it in San Diego, too.

14           And I thank you very much for hearing us today.

15           CHAIRMAN LOCKYER: Thank you very much.

16           Any questions of any of the three witnesses.

17           You get the award for being a 33 record played at 78.  
18 I know you had to get a lot of material in there, so you had to  
19 kind of go fast. Thank you.

20           Gentlemen, I guess it's time to have any response that  
21 either or both may wish to make. It's not exactly a trial, so  
22 you don't need to --

23           MR. ARANT: Keep reminding me that.

24           CHAIRMAN LOCKYER: -- keep every specific fact, but  
25 just sort of the general pattern.

26           MR. ARANT: I'll go.

27           The first speaker concerning the diseased fish, we've  
28 seen the fish. We're concerned about that.



1 For us to conclude that that's a direct result of  
2 anything SDG&E is doing is a bit of a leap.

3 It's true, there is no money to study that, and there  
4 is no data to verify or disprove that. As a matter of fact,  
5 part of the SDG&E renewal permit involves a number of studies of  
6 the Bay around the SDG&E plant to look into some of these  
7 problems that they may or may not be creating in the Bay.

8 The issue of the sand, I addressed that in my  
9 presentation. Our responsibility was to certify the results of  
10 the testing by the Navy. We did that.

11 CHAIRMAN LOCKYER: Could you have said they were  
12 inadequate, that the testing was inadequate.

13 I guess some of the folks that have talked or others  
14 appeared before the Board and said, "We think you shouldn't  
15 agree to this right now. We've got independent expert evidence  
16 that shows dioxin."

17 MR. ARANT: As I recall that discussion, the role and  
18 the responsibility of the Regional Board was to certify that the  
19 testing had been done as required by you law. That's my  
20 recollection.

21 With respect the outfall, I want to emphasize that the  
22 outfall was lengthened and deepened, and so we believe that that  
23 situation has improved.

24 I have not seen the information provided by Ms. Hunter.  
25 There are a number of issues there.

26 CHAIRMAN LOCKYER: Some of them are the same. We  
27 didn't talk about the dairy, I guess.

28 MR. BADGER: I can address that.

1 CHAIRMAN LOCKYER: We heard about it, I will say, the  
2 last time we had a confirmation, at great length, as I recall.  
3 We confirmed the appointee at that time.

4 MR. BADGER: The reason the Board approved that permit  
5 at that time was, we felt there was adequate proof that water  
6 that drained from that dairy drained the opposite direction from  
7 the wells that were involved with that high nitrate problem. We  
8 felt that that dairy did not, in fact, have an impact upon those  
9 wells that were located northly of it.

10 MR. ARANT: With respect -- I just was jotting down  
11 some things as she went -- the Paco Terminals. It's true that  
12 we did, if you will, buy into the argument that the cleanup  
13 could be done at a reduced level, so we did reduce the level.

14 I would say, though, that we were presented information  
15 that showed that the reduced level would leave the sediment in  
16 the Paco Terminal area at a level that would not be acutely or  
17 chronically toxic to the population in that area.

18 That was taken up on appeal by EHC, and the State Board  
19 did reverse our decision and did enforce more stringent cleanup  
20 levels, which was ultimately performed.

21 But that's correct. We did reduce the cleanup levels.

22 The live stream discharge permit with Eastern Municipal  
23 Water District, as I remember that, that got into more of a  
24 jurisdictional issue between EPA and the Regional Board. We  
25 felt that the phosphorous and nitrogen levels that our permit  
26 contained were reasonable. That permit was then later on  
27 handed back to the Regional Board, and it will be coming forward  
28 as part of the Rancho California live stream demonstration

1 project.

2 The sediment monitoring issue, I did cover that here.  
3 We did lift the requirement for sediment monitoring on the basis  
4 that there was some hope that there might be a way to develop a  
5 coordinated monitoring program that would refocus some of the  
6 resources that were being spent on individual boat yards doing  
7 their monitoring, to more a broad-based monitoring program, to  
8 attack some of the transference issues. There's always the  
9 issue of, "Gee, what is that sediment? It's not my  
10 responsibility. It moves in by the currents in the Bay."

11 As I alluded to before, what we are hoping to do is to  
12 create a monitoring program that takes in the entire Bay and  
13 uses the UCSD Super Computer to kind of model the Bay so we can  
14 take a broader look at all of the problems in the Bay.

15 Finally, on the boat yards, at the time that we had  
16 suspended the sediment monitoring, these boat yards have been  
17 going through actual cleanups. So, there has been sediment  
18 monitoring, monitoring the effectiveness of the actual sediment  
19 cleanup, which was enforced by the Regional Board.

20 CHAIRMAN LOCKYER: Are these boat yards where they're  
21 constructing or maintaining service?

22 MR. ARANT: Maintaining.

23 The contamination results from the cleaning of the  
24 hulls. And so, we have gone through a series of sediment  
25 cleanups. The last one is under way.

26 It has taken a long time. These things take many, many  
27 years, because there are legal issues, there are jurisdictional  
28 issues. But we have affected a sediment cleanup.



1           And I would, with all due respect to Laura, not every  
2 Board member is going to absolve the boat yards of their  
3 sediment monitoring responsibility. I, for one, believe that  
4 when we come up with a comprehensive program, that sediment  
5 monitoring may be at a reduced level over time, but sediment  
6 monitoring is important, will be an important component of the  
7 final monitoring program that we have for the boat yards.

8           Those are the notes that I had. I'd be glad to respond  
9 to any specific questions.

10          MR. BADGER: I would like to especially comment on the  
11 sediment monitoring.

12          It was suspended, yes. There's an ongoing program to  
13 determine what type of monitoring will be required now, and  
14 whether it is sediment or not remains to be seen.

15          However, sediment monitoring has continued under law as  
16 they remove -- as they go into these boat yards and they take  
17 this sediment out, under law they must be monitored to see  
18 what's in there. So, sediment monitoring is ongoing even right  
19 now. It has been ongoing while they have been removing sediment  
20 from the Bay.

21          Also, in the Santa Margarita watershed, they will be  
22 issued a permit probably within the next three to four months  
23 for the live stream discharge. This is something when EPA look  
24 it over, then we, working with them on it, they now agree with  
25 us that these limits that we want to have will be enforced at  
26 that point in time.

27          Ms. Hunter talked about the City of San Diego, and how  
28 badly they've been doing with their sewage spills. Every



1 meeting we have of the Ninth Regional Board, I make a point of  
2 letting the public know who is doing the sewer spilling in  
3 Region Nine. The City always leads; the City always leads.

4 However, I think maybe she may have gotten a little  
5 confused. She talked about three beaches were permanently  
6 closed: two in the north county, one is south of the City of  
7 San Diego. So, for once those had nothing to do with the City  
8 whatsoever.

9 CHAIRMAN LOCKYER: They're still in your jurisdiction.

10 MR. BADGER: Yes, they're still in our jurisdiction.

11 CHAIRMAN LOCKYER: I think that was the point.

12 MR. BADGER: The sludge problems, hopefully, that  
13 sludge problem, it's been trucked away now; it's gone; it is  
14 finished. That, I believe, is where the judge hit us with a  
15 Writ of Mandate, that we had to go back and redo before we could  
16 -- before that fine --

17 CHAIRMAN LOCKYER: This was the Navy's?

18 MR. BADGER: No, that was the City again.

19 CHAIRMAN LOCKYER: Yes, I know the one.

20 MR. BADGER: Usually the City down there.

21 Then Mr. Olsen talking about the Judge Brewster calling  
22 the City scofflaws back in 1983. Neither Gary nor I were on the  
23 Board in 1983. But it didn't take us long to get up to speed  
24 that that was a very true statement.

25 That's all I have, Mr. Chairman.

26 MR. ARANT: Under the discussion of EHC's survey of the  
27 various permits around the Bay, I would like to re-emphasize  
28 that many, many of our enforcement actions are informal

1 enforcement actions. In other words, they were handled at the  
2 staff level. And so, there have been a been number of informal  
3 enforcement actions that have led to corrective action.

4 It is the more difficult and the more -- the larger  
5 violations that ultimately reach the Board level for enforcement  
6 action.

7 MR. BADGER: Also, one part of Ms. Hunter's testimony  
8 that there was a few hundred violations in one area. Over half  
9 of those were caused by one thing that the Navy had done, and  
10 under our enforcement levels A and B, staff had taken care of  
11 that. It was corrected. We never saw it at the Board. The  
12 Board members never saw that great number of violations.

13 CHAIRMAN LOCKYER: It didn't come up?

14 MR. BADGER: It was corrected by staff.

15 CHAIRMAN LOCKYER: Yes, another comment.

16 MR. OLSEN: Perhaps I misspoke about Judge Brewster's  
17 comments. The case is a federal case, CV 88 1101(a). It was  
18 filed in November of 1988. Judge Brewster's comments were made  
19 in court session in 1989.

20 CHAIRMAN LOCKYER: Had you concluded?

21 Any questions from Members at all?

22 Okay, I guess we're at that point. What I've indicated  
23 to Senator Lewis, who has bounced back and forth between  
24 Appropriations Committee and this one, is that if it made a  
25 difference to have himself and Senator Beverly, who's at the  
26 Convention in San Diego, if it would make a difference to have  
27 them present, I'd think it would be appropriate to postpone  
28 voting and all. I don't think it does.

1           And it's the most difficult thing to do, frankly, to  
2 sit here and vote no on somebody who's been serving for a number  
3 of years in public capacities.

4           One of my concerns is, it may just be too many years.  
5 And we have a very limited role with respect to the dozens of  
6 appointments that we review, or policies that we act on. Most  
7 of them emanate from the executive branch.

8           When you hear comment from around the state about the  
9 jobs of water quality undertaken by the different Regional  
10 Boards, San Diego seems to be the one that is most frequently  
11 criticized for weak enforcement.

12           I assume we could probably talk for days or months  
13 about each one of those issues that somebody has made a comment  
14 on. It just seems to me that our task is not to get consumed by  
15 the detail, but to understand the general trend and pattern. At  
16 least personally, I'm convinced that we somehow need to send a  
17 message that stronger enforcement is necessary in this region.

18           I'm partly sorry that it happens to be to you two that  
19 are before us, because you're obviously public citizens  
20 committed to doing what you can to make life better in your  
21 region, and yet I feel compelled to somehow send that message to  
22 people and the region that we just demand clean waters and more  
23 adequate enforcement efforts.

24           MR. ARANT: Can I speak before you vote.

25           CHAIRMAN LOCKYER: Yes.

26           MR. ARANT: If it goes the way I think it's going, I  
27 would just like to say that I've enjoyed my time serving the  
28 State of California.



1 I would also like to say that, knowing what I know now,  
2 I wouldn't have voted any differently on any of the issues that  
3 came before me. Because just as you, as Legislators sit here  
4 and hear testimony on each and every bill, and then later on,  
5 people go back and say, "What was the Legislature thinking about  
6 when they did this? Didn't they foresee those problems?"

7 Each issue that we deal with is presented with various  
8 points of view, a lot of data, history, past violations, past  
9 efforts to correct violations. And it becomes a quasi-judicial  
10 process, where you sit in judgment based upon information you  
11 receive.

12 So, I would like to say that, yes, there's been some  
13 decisions that may have, in retrospect, been done differently.  
14 But I think it's important when you're sending messages to  
15 future board members, that you send the message that you need to  
16 deal with each issue on the merits of that issue, and not be  
17 looking down the road at your next confirmation hearing, and how  
18 am I going to be criticized by public interest groups or special  
19 interest groups. That should not affect the vote of your board  
20 members. It never did affect vote, and I'm proud of that.

21 And you need to be cognizant of sending a message that  
22 my replacement, if there is a replacement for me, needs to be  
23 worried about how he or she votes because it may not bode well  
24 the next time they seek reappointment or confirmation.

25 CHAIRMAN LOCKYER: Well, I don't know what to do about  
26 that. That is a problem.

27 I can tell you a number of votes I've cast over the  
28 years that, in retrospect, I wish I had cast a different vote.



1 So, I have a little different experience than you.

2 But it seems to me that if, using your language, if I  
3 were to be critical, it's that this Board has been too sensitive  
4 to special interests, starting with San Diego Gas and Electric  
5 and others. That's just my conclusion from what I've heard.

6 As a result of that, I don't mean any personal  
7 diminishment of your commitment to these tasks, or your personal  
8 integrity, or anything of that sort. I just think as a matter  
9 of policy, I would prefer to see a more vigorous enforcement  
10 activity.

11 Thank you, gentlemen, though, for sharing your thoughts  
12 and helping educate us with respect to these issues.

13 I think the vote we have to take would be either to  
14 move them out to confirm, which Senator Lewis would make, or to  
15 hold them in the Committee, which I don't think there's three  
16 votes to do. So, I think we just maybe don't do  
17 anything.

18 SENATOR AYALA: We do have a short vote here.

19 CHAIRMAN LOCKYER: Yes, we have two that would vote to  
20 confirm. I believe we have two that would vote not to confirm.  
21 And the last I heard, at least, one that would wish to abstain  
22 and not cast either a yes or a no vote, if that's accurate,  
23 Senator.

24 SENATOR AYALA: Couldn't we hold it until the whole  
25 board is here for vote only?

26 CHAIRMAN LOCKYER: Yes, we can.

27 MR. ARANT: Are we required to come back?

28 CHAIRMAN LOCKYER: No.

1           Okay, let's see, going back to our agenda, we do have  
2 Mr. Canestro and Mr. Storchheim, both appointees to the State  
3 Building Standards Commission.

4           I guess you might as well both come up. There'll be  
5 the same questions for you both, I think.

6           Hi, do you want to tell us a little about yourself,  
7 kind of some background or something?

8           MR. STORCHHEIM: Yes, I'm Bob Storchheim. I hold the  
9 local building official's seat on the Building Standards  
10 Commission.

11          CHAIRMAN LOCKYER: Irvine, isn't it?

12          MR. STORCHHEIM: I am the chief building official,  
13 Irvine. Have been for -- since 1976. I have extensive  
14 experience in the construction industry.

15          And we understand that you have some questions about  
16 codes, and I stand ready to respond to them and any other  
17 questions.

18          Thank you.

19          CHAIRMAN LOCKYER: Thank you, sir.

20          How many years have you served on the Commission

21          MR. STORCHHEIM: This is -- this would be my first  
22 reappointment. So, I've served one term prior to this one.

23          CHAIRMAN LOCKYER: This is five years so far?

24          MR. STORCHHEIM: Five, yes, four and a half.

25          CHAIRMAN LOCKYER: All right.

26          Yes, sir.

27          MR. CANESTRO: My name is John Canestro. I live in  
28 Castro Valley, California and have my office in Pleasanton. I'm

1 a consulting engineer and have been for the past ten years.

2 Prior to that time, I spent 25 years as building  
3 official in the City of Hayward and the City of El Cerrito.

4 I've served for the past 12 years happily on the  
5 Building Standards Commission as -- currently as a public  
6 member.

7 And I understand, sir, you have a lot of questions.

8 CHAIRMAN LOCKYER: Well, I think mostly we had  
9 questions about the plastic pipe controversy, and wanted to  
10 spend some time understanding your perspectives on that.

11 I could ask questions, or you could just tell me what  
12 you think.

13 MS. CANESTRO: Well, there are two issues, Senator.  
14 One is -- the current one is the CPVC. And there has been an  
15 issue of -- a legal issue more than one of the Commission's  
16 involvement, and that's on the ABS or the Acrylonitrile-  
17 Butadiene-Styrene piping.

18 And there are two issues. One on the ABS pipe, and one  
19 is on the CPVC piping.

20 As I stated, the ABS issue is more of a legal issue and  
21 does not directly involve the Building Standards Commission.

22 CHAIRMAN LOCKYER: And CPVC is --

23 MR. CANESTRO: Is one we have taken an action recently  
24 on a submittal by the Department of Housing and Community  
25 Development.

26 CHAIRMAN LOCKYER: Right. And what did the Department  
27 indicate or recommend?

28 MR. CANESTRO: Well, the Department sent to us -- let

1 me back up.

2 There's a bill passed last year. It was an emergency  
3 bill that grandfathered in some CPVC piping that was installed  
4 in Southern California because the soils became very hot; that  
5 is, very acidic. Ate through all metal piping, including copper,  
6 so that the departments down there allowed the use of CVPC  
7 piping in the soils.

8 The emergency legislation prompted the Department of  
9 Housing and Community Development to develop some regulations  
10 for permitting CPVC to be used where, prior to that time, there  
11 was -- it was disallowed in the State of California for a period  
12 of about 15 years.

13 CHAIRMAN LOCKYER: And so, the Commission then acted on  
14 that recommendation how long ago?

15 MR. CANESTRO: Yes, three months ago.

16 CHAIRMAN LOCKYER: Okay.

17 MR. CANESTRO: We had taken an action to support the  
18 recommendation of the Department of Housing and Community  
19 Development. That action was affirmative. We did support it,  
20 and it became -- went into effect immediately.

21 CHAIRMAN LOCKYER: You didn't have a son that went to  
22 San Leandro High, did you?

23 MR. CANESTRO: No.

24 CHAIRMAN LOCKYER: Well, you're a constituent, so that  
25 was partly why I thought that the name sounded familiar.

26 MR. CANESTRO: Went to El Cerrito High School.

27 CHAIRMAN LOCKYER: So, the current status, then, of  
28 CPVC is that it's permissible in what circumstances?



1 MR. CANESTRO: It's permissible to be used throughout  
2 the dwellings and in water service.

3 There has been some Writ of Mandamus filed with the  
4 court in San Francisco to reverse the action taken by HCD as  
5 well as the Building Standards Commission. And that is pending.

6 CHAIRMAN LOCKYER: Either of you on this point, still  
7 on the pipe.

8 There seemed to be some substantial amount of comment  
9 that there are public health risks or impacts associated with  
10 CPVC. Did your Commission have to take testimony about that  
11 when you acted? I see heads nodding. Yes?

12 MR. STORCHHEIM: Yes, there were several hearings.

13 The first action was an urgency action. Second one was  
14 a full rule-making process, where a 45-day hearing process  
15 occurred, and the Building Standards Commission conducted  
16 hearings. And we took on quite a bit of testimony, testifying,  
17 attesting to the fact that there -- one side said there was a  
18 health problem; the other side said there wasn't.

19 CHAIRMAN LOCKYER: And how did you resolve that dispute  
20 in your own mind?

21 MR. STORCHHEIM: Well, first of all, we took testimony  
22 that every state but California has been using CPVC, and there  
23 was no documented evidence that it was a health risk. And there  
24 was documented evidence that when water plants don't have the  
25 right chlorine formula make-up in their water delivery, it is a  
26 problem. And other forms -- all metallic forms of water  
27 services failed.

28 So, putting that all together, this is the reason that

1 we made this issue.

2 We also questioned how this worked with CEQA, and they  
3 had some opinions provided to us in that regard.

4 MS. CANESTRO: The bill itself that prompted the action  
5 of HCD mentioned the CEQA or the EIR was not necessary in this  
6 process. The precise language I don't remember, but there was  
7 some language regarding that exclusion of an EIR.

8 CHAIRMAN LOCKYER: On the existing Southern California  
9 problem?

10 MR. CANESTRO: Yes, sir.

11 CHAIRMAN LOCKYER: But you now have a wider approval.  
12 That is, it's now standard, as I understand the current status  
13 of things.

14 MR. CANESTRO: Yes.

15 CHAIRMAN LOCKYER: So, it's not just the Southern  
16 California grandfathering, so to speak, but the babies in the  
17 future, plastic pipe is permitted.

18 MR. CANESTRO: Statewide, that's correct, sir.

19 CHAIRMAN LOCKYER: Are there other questions before we  
20 take any testimony?

21 SENATOR AYALA: I'd like to know your views on the  
22 plastic pipe in building construction. You touched on it  
23 earlier, but what are your views as it pertains to plastic pipe?

24 MR. CANESTRO: This is on CPVC, sir, or ABS?

25 SENATOR AYALA: Yes.

26 MR. CANESTRO: CPVC is an alternate material, and as  
27 long as the material is not abused -- that is, the material  
28 temperatures on the water heater doesn't exceed the 190 degree

1 limitation; it's within 170 degrees, which is the working  
2 temperature. Most water heaters run 135 to 140 degrees for  
3 domestic use -- there shouldn't be a problem, and I doubt there  
4 would be.

5 CHAIRMAN LOCKYER: McDonald's doesn't put its coffee in  
6 plastic pipe, apparently.

7 MR. CANESTRO: McDonald's wouldn't be allowed to use  
8 this piping, Senator.

9 MR. STORCHHEIM: To expand on that, there is a relief  
10 valve required by code, where it would discharge at 140 degrees.  
11 And that is the safeguard.

12 We also -- there's a very strict set of standards in  
13 the approval in the plumbing code for the installation of this  
14 material, such as when it goes through fire separation test, and  
15 testing by a recognized list -- list testing listing agency, to  
16 attest to the fact that it can be used in that regard. If not,  
17 a different material would have to be used.

18 SENATOR AYALA: As I recall, I think, last year an  
19 Assembly bill last year provided authority to use plastic pipe  
20 whenever it was feasible.

21 Is that working today? Has that been used?

22 MR. STORCHHEIM: I believe you're referring to  
23 Assemblyman Baca's bill.

24 SENATOR AYALA: Yes.

25 MR. STORCHHEIM: That's the one that triggered HCD to  
26 write this regulation and submit it to the Building Standards  
27 Commission.

28 SENATOR AYALA: That can be used today in domestic



1 application?

2 MR. STORCHHEIM: Yes, sir, as long as it complies with  
3 public standards and complies with all the requirements in the  
4 Uniform Plumbing Code.

5 SENATOR AYALA: Prior to that bill, they couldn't do  
6 it? They couldn't use it. Prior to the Baca bill, they  
7 couldn't do it?

8 MR. STORCHHEIM: No, sir.

9 CHAIRMAN LOCKYER: I think the statute was adopted in  
10 '94, it might have been a year or two before that, which  
11 designates for purposes of the Uniform Mechanical Code -- I  
12 always confuse these letters -- but IAPMO, I think it's called,  
13 or something like that.

14 Anyhow, I think that's what's in the actual law, but as  
15 I understand, the Commission took some different requirements  
16 and adopted those.

17 Could you just kind of help us understand what's going  
18 on here between these different groups or something?

19 MR. CANESTRO: In 1980, sir, there was a complaint  
20 filed, an exclusionary demand of plastic piping for domestic  
21 use. That went through to the -- it was based upon a change in  
22 1982 Uniform Plumbing Code, which was different from the 1979,  
23 which allowed plastic piping on some limited basis of type of  
24 buildings and drain wastes and vent systems, but pretty much  
25 allowed PVC and CPVC, AB piping which is another plastic pipe,  
26 through the buildings.

27 The court ruled that they needed a complete EIR  
28 provided to ensure that the carcinogenics that may or may not be



1 in the piping was evaluated. And the EIR then had to come back  
2 to the HCD, and then there would be public hearings.

3 It's my understanding that the EIR was done. It was  
4 finished and provided to HCD. And I don't know where it stands  
5 as we speak in terms of public hearings, but it has been  
6 completed.

7 The draft that I've read of that EIR does not show that  
8 there are carcinogenic problems with the use of CPVC.

9 There is some contest, as I understand it, that the EIR  
10 was not complete and did not do an adequate job. That's a  
11 matter of others' opinions, of course.

12 CHAIRMAN LOCKYER: Maybe I was --

13 MR. STORCHHEIM: I understand, Senator.

14 CHAIRMAN LOCKYER: There seems to be a statute.

15 MR. STORCHHEIM: You're talking about the adoption of  
16 the Mechanical Code.

17 CHAIRMAN LOCKYER: Yes.

18 MR. STORCHHEIM: There is a statute that states that  
19 the Mechanical Code as published by the International Conference  
20 of Building Officials, which we will call ICBO, and IAPMO,  
21 jointly published, will be the model codes referenced in the  
22 State of California.

23 And it worked very well over the years for the state  
24 until the organizations had a parting of the ways. There was a  
25 business change. They were not working together any longer.

26 CHAIRMAN LOCKYER: What's caused the divorce?

27 MR. STORCHHEIM: To the best of my knowledge, it was a  
28 business dispute between the two organizations.

1 CHAIRMAN LOCKYER: Over --

2 MR. CANESTRO: How they were structured and how they  
3 were operating.

4 MR. STORCHHEIM: How the Code changes would occur.

5 So, here we had the dilemma. The statute also requires  
6 us to do a triennial adoption to look at the codes every three  
7 years. There's a three-year code cycle, both organizations.

8 We were faced with the dilemma of these two  
9 organizations not getting along. We had to have a Mechanical  
10 Code. There were federal mandates that the state had to comply  
11 with. One of them, for example, which you may be familiar,  
12 Senators, were the refrigeration, whole environmental change in  
13 refrigeration.

14 CHAIRMAN LOCKYER: Yes.

15 MR. STORCHHEIM: We needed a code that dealt with  
16 that.

17 So, I believe all the Commissioners were very concerned  
18 that this thing be worked out between the two organizations.

19 In September of 1994, we started a series of meetings,  
20 spearheaded by the Secretary of Consumer Services. There was a  
21 committee established, and all the parties were brought  
22 together. And we have a chronology of some 58 contacts that  
23 were made, some 13 or more actual meeting by all the parties.

24 We continued to try and get these organizations to  
25 come together because the most healthy thing that can occur for  
26 California is for them to come together and make a business  
27 agreement.

28 And we are very aggrieved. We're very concerned. We

1 continue to work.

2 There have been -- there has been talk in the last few  
3 days of an accelerated activity to make this work. And the  
4 whole Commission has been kept abreast of what's happening. The  
5 Negotiating Committee could only have two Commissioners on it  
6 because of the Open Meeting Act.

7 And we intend to, and make this commitment to, resolve  
8 this problem once and for all so we can move ahead.

9 CHAIRMAN LOCKYER: If there aren't other questions,  
10 let's take some testimony, then I'll call you back, gentlemen.  
11 Thank you very much.

12 Supporters that want to make a comment.

13 MR. RAYMER: Thank you, Mr. Chairman, Senators.

14 I'm Bob Raymer. I'm Technical Director and staff  
15 engineer with the California Building Industry Association.

16 I personally have known both of these individuals for  
17 well over a decade, and in Mr. Canestro's case, for 15 years.  
18 Without question, without question, they both have extraordinary  
19 resumes. I'm sure that you've reviewed that. In Canestro's  
20 case, he's probably one of the most distinguished building  
21 officials in the entire country.

22 I represent our national organization on a number of  
23 building code issues at the national level -- handicapped  
24 access, energy conservation, fire safety. And in many of my  
25 travels to other states, the East Coast, John is also held in  
26 the highest regard.

27 I've worked with Mr. Storchheim for over a decade on  
28 Energy Code issues, highly technical code. But once again, he's



1 always had the best interests of the state at heart. An  
2 incredible amount of dedicated and good community service has  
3 been put into this over the years.

4 I should say that while --

5 CHAIRMAN LOCKYER: What's your association's philosophy  
6 with respect to plastic pipe?

7 MR. RAYMER: Our association philosophy is that, number  
8 one, we want the State of California to reference the national  
9 codes with as few amendments as possible. Number one, the  
10 uniformity issue plays well throughout the states. Somebody who  
11 designs a building who may have their office based in San Diego,  
12 but is going to build it in Yreka, it'd be good to know what the  
13 codes are. And quite frankly, you can be held at the plan check  
14 counter and everywhere else if there are slight modifications.

15 Well, once again, if we take the national codes, with  
16 as few amendments as possible, that problem is pretty well  
17 resolved.

18 In the case of plastic pipe, this is a very different  
19 issue than what the Commission has usually been dealing with  
20 over the last 15 years. Usually, in almost every instance, the  
21 Building Standards Commission is debating and reviewing proposed  
22 modifications or amendments to the National Model Building  
23 Codes.

24 In this particular case, with CPVC, Chlorinated Poly  
25 Vinyl Chloride pipe, what the Building Standards Commission was  
26 considering this time around was allowing the use of the Code as  
27 written at the national level. For the last 14 to 15 years, the  
28 other 49 states have been utilizing that section of the National



1 Code which allows CPVC.

2 But there's a long history in California over the  
3 plastic pipe issue in general. For about the first decade of  
4 that controversy, we were pretty much in the middle of the road.  
5 We obviously wanted to have access to a wide variety of  
6 products. In some cases, construction with CPVC and other  
7 plastic pipes can be done much cheaper than metal pipes, but in  
8 other cases, you may want to use the metal pipes for certain  
9 structural integrities, or whatnot. So, in essence, we wanted  
10 to have a full range of choices as allowed in the other states.

11 At the same time, we did not want to be putting  
12 something into our homes which could later be a health problem.  
13 And so, part of my duties with CBIA was to monitor the  
14 particular pipes, reviewing the EIR that was going on.

15 And over a course of time, it did become apparent that  
16 there was, as usual, more to the issue than met the eye, but it  
17 seemed that at least with the case of CPVC -- I'm not speaking  
18 for Poly Butalene or ABS -- but at least with CPVC, there was a  
19 very good track record, an established use throughout the rest  
20 of the country with little, if any, unnecessary problems.

21 I mean, there's problems with any building product,  
22 metal pipes or plastic pipes. If it's installed incorrectly,  
23 you'll certainly have problems down the road.

24 But as representing our group at a national level, CPVC  
25 has very good track record. And so, our policy is, if it's  
26 allowed in the national code, let's go with it unless it can be  
27 proved that it's bad.

28 CHAIRMAN LOCKYER: Okay.

1 MR. RAYMER: A few other points related to governmental  
2 efficiency and the consolidation efforts.

3 Both John and Bob have been key figures in the effort  
4 to consolidate the codes and the code writing process. Case in  
5 point, in 1984, I was working out of several different manuals  
6 and code books to try and understand our own handicapped  
7 accessibility regulations in California. Today, I only have one  
8 code book and one implementation manual.

9 The same goes for the energy regs. I used to be  
10 working out of six different code books in 1984 and '85. Today,  
11 once again, it's one code book and one design manual.

12 For the architects out there in the field that are  
13 expected to keep up to date with the codes, to implement these,  
14 given all the other concerns that they have to deal with, the  
15 work that John and Bob have done over the last five to six years  
16 in getting some common sense and efficiency to the project have  
17 just been incredible. We, the private sector, are very grateful  
18 for that.

19 More importantly and more recently, the implementation  
20 of the AB 47 code consolidation process, instead of having over  
21 a dozen separate code development and adoption proceedings going  
22 on at the state level at any given time, which I used to have to  
23 represent CBIO in the early '80s, we now have one annualized  
24 process. There was a lot of work that went into that bill. It  
25 was supported in the end in a bipartisan way. However --

26 CHAIRMAN LOCKYER: Who was the author?

27 MR. RAYMER: -- getting the regs actually implemented  
28 took us about a year and a half to two years, and we had to burn

1 the midnight oil.

2 CHAIRMAN LOCKYER: Who was the author?

3 MR. RAYMER: That was Delaine Eastin, AB 47, 1992, I  
4 believe.

5 And in the end, it is certainly working out quite  
6 well. And to make that happen, once again, the midnight oil had  
7 to be to be burned.

8 The state has done well with these two representatives.  
9 Thank you very much.

10 CHAIRMAN LOCKYER: Thank you.

11 MR. SCHULTZE: I'm Don Schultze, and I'm the building  
12 official for Sacramento County and represent CABO, the  
13 California Building Officials.

14 California Building Officials are in very strong  
15 support of both John and Bob. And I -- personally, I was the  
16 past member of the Building Standards Commission, so I'm very  
17 aware of the responsibilities of that commission.

18 I can say that from personal experience, that both John  
19 and Bob have just been doing an outstanding job for the building  
20 officials of California.

21 CHAIRMAN LOCKYER: Thank you.

22 I'm going to call up opposition, if there is some  
23 present, but I think it might be worth making note of a letter  
24 from the President of B.F. Goodrich, who apparently saw Governor  
25 Wilson while he was campaigning for President last fall in  
26 Columbus, Ohio.

27 In the letter, it indicates that B.F. Goodrich is the  
28 principal manufacturer of CPVC, that it's been approved by



1 various code organizations in other states, and California is  
2 used for fire sprinkler systems and industrial piping. "Would  
3 like to see the California market opened up, but due to a long  
4 and drawn out battle with the pipe trades unions, and state  
5 regulatory policies developed in a previous Democratic  
6 administration, such pipe is not allowed in California."

7 He goes on to say that the Department of Housing can  
8 issue an approval of CPVC plumbing by edict, and wished that  
9 that would happen, best wishes on your campaign, and so on.

10 Well, it's interesting to me that this letter was sent  
11 in September of '95. Shortly thereafter, the Housing and  
12 Community Development Department did, in fact, issue the edict  
13 that B.F. Goodrich was requesting, and then it was approved by  
14 this Commission.

15 It stinks. It stinks of rotten, dirty special interest  
16 politics.

17 Okay, what do you fellows want to say?

18 MR. CARTER: Mr. Chairman and Members, Art Carter,  
19 representing the California Pipe Trades Council.

20 Dan Cardozo, who's here with me and is attorney with  
21 the state Pipe Trades Council, we are here in strong opposition  
22 to both of these nominees. The plastic pipe issue, and the  
23 manner in which it was dealt with is one of the key issues.  
24 There is another, and I'll let other witnesses speak to that.

25 But Mr. Cardozo has been dealing with this issue at  
26 length for some time. I think he could very quickly lay out the  
27 chronology of the manner in which this has happened, and in  
28 particular, the manner in which the Commission has acted on



1 this, despite being given lots of information.

2 And in fact, the letter to which you refer from B.F.  
3 Goodrich, we discovered through the Freedom of Information  
4 request in the file of the Building Standards Commission.

5 So, at this point, let me turn this over to  
6 Mr. Cardozo.

7 MR. CARDOZO: Thank you.

8 Good afternoon, Mr. Chairman and Members. My name is  
9 Daniel Cardozo. I'm an attorney representing the California  
10 Pipe Trades Council.

11 As Mr. Carter indicated, we are opposing the  
12 reappointment of these nominees to the Building Standards  
13 Commission primarily because of the recent action taken by the  
14 Commission to approve Chlorinated Poly Vinyl Chloride, CPVC  
15 plastic pipe, to carry drinking water in homes throughout  
16 California. The first time that that action's been taken in  
17 this state.

18 We think -- in our view, this action was taken in  
19 blatant disregard of the public health and safety. It was taken  
20 despite the fact that the public and worker health studies and  
21 environmental impact report, that had been commenced to evaluate  
22 the impacts of this action on public health and safety, have  
23 never been completed. And it was taken despite the fact that  
24 this administration, the Wilson administration, assured in  
25 writing all parties that had been involved in the plastic pipe  
26 EIR proceeding, including several members of this Legislature,  
27 that it would not take action to approve plastic plumbing pipe  
28 until the environmental impact report and the public health

1 studies were completed.

2 Very brief background on this. The recent Building  
3 Standards Commission action was to approve building standards  
4 proposed by HCD, by the Department, to allow CPVC use throughout  
5 the state.

6 HCD had previously determined that that very action, to  
7 approve CPVC, would potentially cause significant public health  
8 and worker health and environmental impact in the state.

9 CHAIRMAN LOCKYER: When was that?

10 MR. CARDOZO: That was in 1980 that the Department  
11 originally acted. In '82, they commenced the EIR process.

12 HCD determined that there was a potential for  
13 significant impact. It prepared its initial -- let me correct  
14 myself.

15 In 1982, it determined that an environmental impact  
16 report was required, including a worker health study.

17 CHAIRMAN LOCKYER: Does this letter from Maureen  
18 Higgins from '89, is that the one you're relying on to say they  
19 wouldn't adopt anything until there was a complete study?

20 MR. CARDOZO: Yes, that's right.

21 CHAIRMAN LOCKYER: Nothing subsequent to that?

22 MR. CARDOZO: Nothing subsequent to '89.

23 What happened, the chronology is that the Department  
24 prepared a draft EIR which included the worker health study.  
25 The initial determination of the Department was that the plastic  
26 pipe approval presented a potential for significant public  
27 health hazards. Those hazards in particular had to do with the  
28 approval of CPVC drinking water pipe.

1           The Department's conclusion in its initial study was  
2   that the use of CPVC could result in the leaching of toxic and  
3   carcinogenic chemicals into the drinking water carried by the  
4   pipe, and that workers could be exposed to toxic chemicals  
5   contained in CPVC solvents during the installation of the pipe.

6           The Department prepared a worker health study. It  
7   prepared a draft environmental impact report. In 1989, it  
8   circulated that draft EIR for public review.

9           It received an unprecedented outpouring of criticism.  
10   There was virtual unanimity that that draft EIR was woefully  
11   inadequate. There were comments in the record from labor  
12   organizations, from environmental and consumer groups, from  
13   state And local public agencies, including the administration's  
14   own Department of Health Services, which strongly criticized the  
15   analysis in the draft EIR. And it included comments from  
16   several members of this Legislature, both Democrat and  
17   Republican.

18           The Department -- by the way, the Department's own  
19   legal counsel concluded that the draft EIR was legally  
20   inadequate and would not support the Department's approval of  
21   the pipe without further analysis.

22           CHAIRMAN LOCKYER: What year was that?

23           MR. CARDOZO: That was 1989.

24           The Department then went back to the plastics industry,  
25   asked for additional funding to complete the document.

26           The plastics industry, in the face of this opposition,  
27   decided to cut its losses, terminate the project, and directed  
28   HCD not take any further action to evaluate plastic pipe. That



1 was in 1994.

2 And the project has remained in suspension until fall  
3 of last year, when, as the Chairman alluded, there was a meeting  
4 between the President and CEO of B.F. Goodrich Specialty  
5 Chemicals, which is currently the only domestic producer of the  
6 CPVC resins which are used to manufacture the pipe. That  
7 meeting was followed up with a letter September 1st, where the  
8 President of B.F. Goodrich Specialty Chemicals requested that  
9 the Governor remove this, quote, "regulatory block" to the sale  
10 of one of its products in California, and as the Chairman  
11 indicated, direct his agencies to approve the material by  
12 edict.

13 One month later, one month following that letter, the  
14 Governor directed -- issued a directive to HCD and the Building  
15 Standards Commission to adopt building standards approving CPVC  
16 in California.

17 In that proceeding there was again a broad coalition of  
18 labor, environmental groups, public agencies, Members of this  
19 Legislature, asking the Commission not to take action without at  
20 least completing the environmental studies that had been  
21 commenced in 1989.

22 That testimony was ignored. There was no response. I  
23 ask anyone to review the records. There was no response to the  
24 substantive issues that were presented in that proceeding.

25 The only expert testimony on the public health and  
26 safety testimony impacts of the pipe was presented by experts on  
27 behalf of this public interest coalition. The Department, B.F.  
28 Goodrich presented only government relations people who said



1 that it was a great product and ought to be approved.

2 So, there's never been a response to the public  
3 comment, the expression of -- overwhelming expression of public  
4 concern about the impacts of this material in California homes.

5 And for those reasons, we believe that this was a  
6 decision which put political expediency above the public health  
7 and safety. And for those reasons, we think any participants in  
8 that decision should not be reappointed.

9 CHAIRMAN LOCKYER: Other comments.

10 MR. CARTER: I would only make other comment.

11 Even Senator Marks sent a letter in March of this year,  
12 asking that the EIR be fully addressed. The action by the  
13 Commission shortly after that was to approve it. He didn't even  
14 get a response. This is from one of your own colleagues.  
15 That's also in the file.

16 MR. PATTON: Mr. Chairman and Members, I'm Gary Patton,  
17 the General Counsel of the Planning and Conservation League.

18 I am here by letter and then now in person to urge you  
19 not to confirm these two appointments.

20 I listened with great interest to the Regional Water  
21 Quality Board deliberations that you just had, and that seemed  
22 to show a possible long-term pattern which needed to be  
23 corrected. Far better to correct something that's wrong in the  
24 first instance, when you can see that something is wrong.

25 Very frankly, Mr. Chairman and Members, PCL has been  
26 concerned and active on this very issue, and I was flabbergasted  
27 to find what the Commission did.

28 We personally commented in that proceeding. I never

1 received any response whatsoever. And we are now forced,  
2 frankly, by the lack of response and responsiveness on very  
3 critical environmental and public health and safety issues, to  
4 essentially start a lawsuit which costs everybody a lot of  
5 money, and certainly the people of the State of California, as  
6 well as the private parties who've had to be involved in it.

7 This was an issue that did come before the Legislature,  
8 and in fact, Mr. Baca's bill, which I lobbied against in its  
9 original form, suggested that the State Legislature should just  
10 override these very serious health concerns and mandate that  
11 this plastic pipe could be used everywhere.

12 And the Legislature did not adopt that approach, I  
13 think very properly. The bill was narrowed to handle a very  
14 specific problem where there was some demonstrable evidence  
15 supporting the use of the plastic pipe material, and we removed  
16 our opposition. The bill did pass. It was signed into law.

17 And then, frankly, after the Legislature, I thought,  
18 had sort of really said what the approach ought to be, which is,  
19 you did need to really study this before you tried some broad  
20 scale rubberstamp of this material, the Building Standards  
21 Commission, under the direction of the Governor now -- and I  
22 knew nothing about that -- just said, sure, go ahead and do it.

23 It is offensive, and frankly, it puts us in jeopardy in  
24 terms of public health and safety. We believe we think it needs  
25 to be studied. It was studied, but never concluded through the  
26 normal process, and we think it is important for you to send a  
27 message this is not the way government should operate in our  
28 state.

1 MR. PRICE: Mr. Chairman and Members, Pete Price,  
2 representing the California League of Conservation Voters.

3 We don't often get involved in appointments to  
4 nonenvironmental agencies, but in this case are two issues that  
5 have brought us here today, safe drinking water and the  
6 California Environmental Quality Act.

7 The use of this plastic CPVC pipe and the glues that  
8 join it together to carry drinking water to homes needs to be  
9 investigated before -- so we can know the public health effects,  
10 if there are any.

11 That's not just League's opinion. As you've heard  
12 before, that's the position of the Department of Housing and  
13 Community Development, at least it was at one time before  
14 politics was injected here. That's why HCD initiated  
15 preparation of the environmental impact report. They could have  
16 decided to issue a negative declaration and move forward. They  
17 didn't decide that.

18 They decided we needed to take a full look at the  
19 public health and environmental impacts of this type of pipe.  
20 In fact, they issued this draft EIR that you've heard referred  
21 to that raised particular concerns about the possibility of  
22 carcinogenic leaching from the pipes into the drinking water.

23 Now, rather than finish the EIR, the plastic pipe  
24 industry last year chose to sponsor legislation to allow the use  
25 of plastic pipes statewide without the completion of the EIR. As  
26 you have heard described by Gary Patton, that bill was  
27 drastically narrowed, and appropriately so, by the Legislature  
28 to deal with very specific communities that had an existing



1 problem with their pipes.

2 Mr. Chairman, I want to speak about safe drinking water  
3 for a moment. In poll after poll of the public, both in  
4 California and nationwide, the environmental public health issue  
5 of greatest concern to the public is safe drinking water.

6 The process that brought us here today has ignored the  
7 law, and it's ignored the concerns of millions of Californians.  
8 And we'd be failing in our duty here if we failed to represent  
9 those millions of people who care about safe drinking water.

10 Thank you.

11 CHAIRMAN LOCKYER: Tell me one time about Assemblyman  
12 Baca, when was that bill?

13 MR. PRICE: Last year.

14 CHAIRMAN LOCKYER: The number was what?

15 MR. PRICE: AB 151.

16 CHAIRMAN LOCKYER: When was it narrowed, in this house  
17 or over there?

18 MR. PRICE: That was in the Senate.

19 CHAIRMAN LOCKYER: Thank you.

20 MR. LEHTONEN: Mr. Chairman and Members, my name is  
21 Steve Lehtonen, and I'm representing the Plumbing, Heating,  
22 Cooling Contractors of California.

23 And I, too, am reluctant to come in here and oppose  
24 people with a long history of distinguished leadership in their  
25 trade and their industry. Nonetheless, I am opposing the  
26 confirmation of these two individuals, but not for the plastic  
27 pipe issue. I'm not concerned with that.

28 My sole issue in this matter is that our association



1 has always supported the State Building Standards Commission.  
2 We sponsored legislation for code uniformity back in the '80s to  
3 do the kinds of things that Bob Raymer was talking about, and we  
4 support the specialty codes. We think they're necessary and  
5 important.

6 And the action taken last year with regard to the UMC  
7 and IAPMO was just unnecessary. The law stated both  
8 organizations. It said "and", and there was a way around that.  
9 They could have let them both publish the UMC.

10 I felt that it was a leadership decision, and the  
11 Commission chose to select ICBO, and I felt like that -- if  
12 there was going to be a change, it should have been made in the  
13 Legislature.

14 Thank you.

15 CHAIRMAN LOCKYER: Thanks.

16 MR. VERMEULEN: Mr. Chairman, my name's Phil Vermeulen,  
17 representing the California Legislative Conference of the  
18 Plumbing, Heating and Piping Industry, representing  
19 approximately a thousand contractors in the state.

20 Everybody has spoken about the plastic pipe issue. I  
21 would add one thing. And that is, there's something -- if you  
22 haven't heard about it, you will soon. It's the issue of ABS  
23 pipe and the problems in approximately thousands of homes in  
24 California. They estimate it's going to be billions of dollars  
25 of cost.

26 This is an issue where ABS pipe was installed on all  
27 these homes as drainpipe, and the manufacturers back in the mid  
28 '80s decided to save a few backs and started putting nonvirgin

1 resins in. In other words, they were recycling.

2 What happened was, when the glues were used and it was  
3 put together, the pipe immediately startled cracking. Even in  
4 my subdivision in Roseville, there are homes with this problem.  
5 You have to rip up slabs. It's going to be one heck of a mess.

6 The point I'm trying to make is, if we go down the line  
7 with this plastic pipe, I guarantee you somewhere along the  
8 line, the manufacturer is going to start cutting corners. We're  
9 going to have the same problems, irrespective of the other  
10 problems of the health and safety, which we are deeply concerned  
11 about as well.

12 Again, we tried to bring these issues up in front of  
13 the State Building Standards Commission this year to no avail,  
14 which deeply concerned us.

15 The other issue, obviously, is the ICBO-IAPMO issue,  
16 which Mr. Lehtonen just spoke about. Our concern there is that  
17 the ICBO version is slightly different than the IAPMO version.  
18 The liability issue for our contractors, the building officials,  
19 and everybody else that's used to using the IAPMO version, there  
20 are potential problems down the line.

21 Again, we urged the Building Standards Commission not  
22 to do what they did because there wasn't a need to do that. But  
23 our pleas went to no avail.

24 For those reasons, we would urge your nonconfirmation  
25 of these two individuals.

26 Thank you.

27 CHAIRMAN LOCKYER: Is there anyone else who hasn't had  
28 a chance to comment.

1           If you want to say anything in response, please feel  
2 free. Tell us how all those people that are for you, you  
3 disagree with them, or is it the other way around.

4           MR. CANESTRO: I think some points of clarification are  
5 necessary.

6           Let me start with the issue when the first -- HCD first  
7 submitted their proposal for CPVC, Mr. Tom Adams of the  
8 Cardozo-Adams firm here in Sacramento submitted a complaint  
9 against that regulation and asked the Building Standards  
10 Commission not to approve the proposal.

11           During that meeting, which there is a record of that  
12 meeting and tape if you'd like to listen to it, during that  
13 meeting, Mr. Adams withdrew his letter and said that he was  
14 concerned about the safety of employees more than he was the  
15 issue of -- that was stated in the letter. So, that was  
16 withdrawn at that time.

17           So, the Commission proceeded to move forward very  
18 carefully, but more forward. We did. We had public hearings,  
19 went through the process that's required by EPA, and finally  
20 made the recommendation, confirm the recommendation of HCD.

21           CHAIRMAN LOCKYER: Weren't there, at least if not at  
22 that particular moment, letters earlier raising environmental  
23 toxicity issues from some of these environmental organizations?

24           MR. CANESTRO: There wasn't -- I don't recall at that  
25 meeting, Senator. But certainly, we felt that Mr. Adams was  
26 taking the lead on this objection to the regulation.

27           CHAIRMAN LOCKYER: But he was objecting to employee  
28 exposures.



1 MR. CANESTRO: To everything in that letter.

2 CHAIRMAN LOCKYER: But I mean in the comment to the  
3 Commission.

4 MR. CANESTRO: Yes, in part that's true. And he came  
5 to closure with HCD that they would prepare some additional  
6 requirements for employees.

7 With respect to the Mechanical Code, the Mechanical  
8 Code was -- we made that decision, as I explained previously,  
9 and we selected what we thought was the most compatible code  
10 based upon the nine point criteria in the family of building  
11 codes for California. We knew that we're not going to be  
12 popular with one organization or the other. We made a choice.  
13 We felt right choice. And to this day, I think it's the right  
14 choice.

15 They, the Pipe Trades Council and IAPMO have taken  
16 exception to that particular action. They filed a writ with the  
17 courts here in Sacramento and went to Superior Court. And Judge  
18 Tuckerman ruled that the Commission's action was appropriate,  
19 and was not inappropriate, was consistent with the law and the  
20 mandate of the Building Standards Commission. So, we feel  
21 that -- that is under appeal, I might add, as we speak.

22 In the final note from my notes, the gentleman, the  
23 last gentleman who spoke, indicated that ABS was brought before  
24 the Building Standards Commission on that problem, and that was  
25 not true. It has never been on the agenda, the issue of ABS and  
26 ABS usage in California in recent years.

27 Some years ago it was of concern, but recent years, the  
28 past eight years that I recall, that has never been brought



1 forward. So, it may have been brought to another commission,  
2 but it certainly wasn't ours.

3 CHAIRMAN LOCKYER: It was allowed some long time ago,  
4 fifteen years or something.

5 MR. CANESTRO: Actually, it's been in the Uniform  
6 Plumbing Code back in the early '60s. It's been allowed in that  
7 Plumbing Code.

8 The same CPVC. It's been allowed for many, many years,  
9 but excluded because of this court action in the early '80s.

10 CHAIRMAN LOCKYER: Did you want to add anything, sir?

11 MR. STORCHHEIM: Again, you know, the approval listings  
12 that we honor, generally speaking, for building officials and  
13 building departments is those listings with research done by  
14 IAPMO in their codes.

15 When these problems occurred that were reported, these  
16 materials and these firms were de-listed. We immediately took  
17 action at the local level to stop approving those products.

18 As far as the Mechanical Code, as Mr. Canestro has  
19 stated, you know, they're concerned about a family code that  
20 works together. To have that family code work together, we need  
21 to be assured that there will be communication and sensitivity  
22 towards that.

23 At one of the hearings, I did ask whether that could be  
24 assured with either code. And I got no answer to that.

25 As far as the groups that formally opposed plastic  
26 pipe, we had this one group and we had the copper development  
27 industry that testified.

28 As far as the CEQA question, the environmental

1 question, we did ask. We were given by HCD an opinion by the  
2 California Legislative Council. Our question was, does CEQA  
3 still apply? Are we constrained to do the EIR, environmental  
4 impact report, completed? We were told by CEQA and legal  
5 counsel, no, because of this legislation we were not  
6 constrained.

7 CHAIRMAN LOCKYER: The Baca legislation?

8 MR. STORCHHEIM: Yes. So, this is what compelled us,  
9 you know, to take the action we're taking. It's being appealed  
10 right now, and it will be heard. We're very sensitive to that  
11 and we'll pay heed to it.

12 In closing, again, this issue with the Mechanical Code,  
13 we feel that there is a solution to bring these organizations  
14 together. And while they should, from a business point of view,  
15 every Commissioner has stated that that's a preference, and we  
16 commit -- I commit and I think all the Commission commits to  
17 taking the most concerted effort possible to look for ways to  
18 bring them together.

19 CHAIRMAN LOCKYER: Thank you, gentlemen.

20 Well, what's the thought of the Committee? Any  
21 comments here.

22 I have a couple of concerns. One is, I'm disturbed by  
23 the apparent political motivations that came from the top. I  
24 don't mean you gentlemen. I don't think you probably were even  
25 aware that this letter was in the file and affected somebody's  
26 attitudes or behavior. But it worries me.

27 I think I'd like to make sure that the next governor  
28 has a fresh opportunity to rethink the entire issue, which leads

1 to a problem, because your terms, if confirmed, would run to the  
2 end of the century and overlap with the next person. And it's  
3 just my own sense of this, that it would be prudent to not  
4 confirm anymore appointments that will run that long of this  
5 sort, and let the next governor take a fresh look at the  
6 situation.

7 I have absolutely no doubt that you both have  
8 impeccable credentials and careers that merit our respect. And  
9 so, I don't mean to in any way denigrate your personal  
10 accomplishments that are quite substantial.

11 I guess that's over summarizing, but it's the  
12 conclusion that I have reached from the discussion.

13 Senator Ayala or Senator Petris?

14 I guess what I would do would be, in the circumstance,  
15 to move that we hold both nominations in the Committee, and not  
16 provide Senate consent to the confirmation. I think that's the  
17 right way to phrase the motion.

18 I'd be happy to have an amendment or turn it around, if  
19 that would be helpful.

20 Any other thought?

21 SENATOR PETRIS: So move.

22 CHAIRMAN LOCKYER: Do you want to vote on that matter.

23 So, I think the holding would be a yes vote, and I  
24 think it's the way that comes out.

25 MR. CANESTRO: Thank you, Senators for your indulgence.

26 CHAIRMAN LOCKYER: Thank you, gentlemen. I wish that  
27 circumstances were different. We appreciate the many years of  
28 service you've put in.

1 Call the roll.

2 SECRETARY WEBB: Senator Ayala.

3 SENATOR AYALA: Aye.

4 SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator  
5 Petris.

6 SENATOR PETRIS: Aye.

7 SECRETARY WEBB: Petris Aye. Senator Beverly. Senator  
8 Lockyer.

9 CHAIRMAN LOCKYER: Aye.

10 SECRETARY WEBB: Lockyer Aye. Three to zero.

11 [Thereupon this portion of the  
12 Senate Rules Committee hearing was  
13 terminated at approximately 5:40 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 16<sup>th</sup> day of August, 1996.

  
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5:02 P.M.



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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

VOTE ONLY

GARY T. ARANT, Member  
California Regional Water Quality Control Board  
San Diego Region

CHARLES E. BADGER, Member  
California Regional Water Quality Control Board  
San Diego Region



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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: All right, the next two are gubernatorial appointees for vote only. We had two members of the Regional Water Quality Board.

The transcript is in front of you. They were heard at the previous meeting. We did not go to a vote because of the Republican Convention.

There were times on a number of issues that there wasn't a full panel, and it seemed like it was better to wait.

SENATOR BEVERLY: Move recommendation to confirm to the appointments of Arant and Badger.

CHAIRMAN LOCKYER: Okay, we have a motion to confirm them.

SENATOR BEVERLY: Did Senator Kelley appear?

CHAIRMAN LOCKYER: Yes, he introduced one of them.

Discussion among Members?

Call the roll.

SECRETARY WEBB: Senator Ayala. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Petris. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Lockyer.

CHAIRMAN LOCKYER: No.

SECRETARY WEBB: Lockyer No. Two to one.

CHAIRMAN LOCKYER: I think we'll hold them in Committee.



1 SECRETARY WEBB: Petris No. Two to two.

2 [Thereupon. This portion of the  
3 Senate Rules Committee hearing was  
4 terminated at approximately 5:20 P.M.]

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SENATOR JOHN LEWIS

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RICK ROLLENS, Consultant on Bill Referrals

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ALSO PRESENT

JOHN H. MULLER, Member  
California Regional Water Quality Control Board  
San Francisco Bay Region

SENATOR QUENTIN KOPP

PAUL PERKOVIC  
Montara Sanitary District

DENNIS COLEMAN  
Half Moon Bay City Council

VICTORIA L. BRADSHAW, Director  
Department of Employment Development

GARY ROSS, Legislative Representative  
Department of California  
American Legion

DON HARPER, Chair  
Veterans Statewide Committee  
California Employers Advisory Council

JULIANNE BROYLES  
California Chamber of Commerce

1 BERT CORONA, Executive Director  
2 Hermandad Mexicana Nacional

3 WILLIE WASHINGTON  
4 California Manufacturers Association

5 MARGA MORALES, Deputy Labor Commissioner  
6 Targetted Industries Partnership Program

7 JOSE MILLAN, Assistant Labor Commissioner  
8 State of California

9 HERMELINDA SAPIEN, Deputy Director  
10 Center for Employment Training

11 ERNIE FLORES, Vice Chairman  
12 La Cooperativa Campesina de California

13 GEORGE ORTIZ, Corporate President  
14 California Human Development Corporation  
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16 PETER R. BIRD, President  
17 Veterans Employment Committee

18 CHARLES WILLIAMS, Chairperson  
19 Northern California Veterans Employment Committee

20 MICHAEL S. JONES, Director  
21 Research and Development  
22 Proteus, Inc.

23 JOHN REECE, Member  
24 State Employment Committee  
25 AmVets

26 GLEN HALSEY, Past State Commander  
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: To accommodate audience members who have joined us, I think we should probably wait until later for the 34 or 33 items that are on our agenda, it's sort of administrative work, and do a couple of confirmations that I think people are here for. It's my understanding, Ms. Bradshaw, that Mr. Muller has some opposition testimony, which I think is untrue of your circumstance, so I'd like to begin with that one.

We'll start with Mr. Muller and Senator Kopp.

SENATOR KOPP: Thank you very much, Mr. Chairman, Members of the Committee.

I'm pleased to present to you for recommendation and confirmation Mr. John Muller. I have known Mr. Muller approximately ten years. The district I represent ends right at the line of the City of Half Moon Bay. Necessarily, I spend some amount of time in and around Half Moon Bay, certainly I spend time in and around Princeton by the Sea, and Moss Beach, and Montara, which are part of the same general area.

I am familiar with Mr. Muller personally. I'm also familiar with his reputation in the community. His reputation for truth and veracity is of the highest order.

He is a successful community participant, not only in terms of his own private business activities, but in terms of participation in community activities and in area activities. He's acutely intelligent. He understands the nature of issues.

I am aware of the fact that apparently some objection has been made to his appointment on legal grounds of some sort.

1 I'm familiar with the substance of those grounds. Obviously, I  
2 leave it to the Committee to evaluate it, but from my  
3 standpoint, the asserted grounds are not valid. They're not  
4 just or fair to Mr. Muller.

5 Just as way of background, the City of Half Moon Bay  
6 and the area around it, particularly the City, has been the  
7 location of differences of opinion about land use for probably  
8 twenty years, two decades easy. I can recall as a lawyer  
9 personally representing property owners in a section of the  
10 City of Half Moon Bay, known as Alsace Lorraine, opposing  
11 imposition of an assessment district, appearing before the City  
12 Council, which wasn't pleased by my threat to litigate the  
13 propriety of the assessment district. That's just a personal  
14 experience.

15 There's an ebb and flow to who controls, Mr. Chairman  
16 and Members of the Committee, the City Council, and there are  
17 constant plebecites on one thing or another. Now that's all  
18 just.

19 CHAIRMAN LOCKYER: Who's for the pumpkins? Everybody?

20 SENATOR KOPP: I think everybody's for the pumpkins.

21 And Senator Ayala, you ought to see those pumpkins, and  
22 Senator Beverly. They are humongous.

23 But that debate on the merits is one thing. But to  
24 attribute or to allege improprieties in the nature of this  
25 appointment to the Regional Water Quality Control Board is a  
26 matter of a different stripe, an unfair stripe, an inapplicable  
27 stripe because nobody has, to my knowledge -- and I read the  
28 Half Moon Bay Review every week faithfully -- no one has ever

1 attributed lack of integrity, or dishonesty, or improper conduct  
2 to Mr. Muller in the pursuit of his private or public affairs.

3 In short, Mr. Chairman and Members of the Committee, I  
4 recommend confirmation of Mr. Muller strongly, and I transmit my  
5 personal assurance to you of his own personal honesty and  
6 integrity.

7 Thank you for taking the matter out of order.

8 CHAIRMAN LOCKYER: Thank you, Senator.

9 If there's an opening statement you'd like to begin  
10 with, it's certainly appropriate to do that.

11 MR. MULLER: Thank you, Mr. Chairman. Thank you,  
12 Senator Kopp.

13 Mr. Chairman, honorable Committee, my name is John  
14 Muller. I reside at 923 Mira Monte Street, Half Moon Bay. I'm  
15 a native son who's lived his entire life on the coast side.

16 My wife and I own and operate Daylight Nursery, a fresh  
17 flower operation. We also grow pumpkins. Our family will be  
18 celebrating 50 years in business in January, 1997.

19 I've spent given my whole life to agriculture, my  
20 community, my country. And as evidenced by my occupation, my  
21 involvements and my service to my country in Vietnam, I'm here  
22 before you pending my confirmation to the Regional Water Quality  
23 Control Board, San Francisco Region, to further serve  
24 government.

25 Thank you.

26 CHAIRMAN LOCKYER: Thank you very much.

27 We have a list of questions that might be relevant to  
28 ask but that are just sort of general philosophy.



1 Perhaps, as a way to focus on whatever issues have  
2 contributed to controversy, I might ask first -- and you can  
3 stay and take notes and answer, if you wish, at the  
4 conclusion -- anyone present who would wish to make any  
5 comments, either in support or opposition to the confirmation.

6 Now, you've been serving since last December. Is that  
7 when you were appointed?

8 MR. MULLER: January was my first meeting of 1996.

9 CHAIRMAN LOCKYER: Okay, sir.

10 MR. PERKOVIC: Good afternoon, Mr. Chairman and Members  
11 of the Committee. My name is Paul Perkovic. I'm a resident in  
12 Montara. I'm an elected official of the Montara Sanitary  
13 District which covers the northern portion of the service area  
14 for the wastewater treatment plant, the sewer authority midcoast  
15 side.

16 I presented for you a letter signed by half a dozen  
17 officials in the City of Half Moon Bay, the Midcoast Community  
18 Council, and the Montara Sanitary District. These are  
19 individuals acting as individuals and not representing the  
20 opinions of their boards or their city.

21 If I may, I'd like to read the letter to you. It's  
22 very brief.

23 "Honorable Senators Lockyer, Ayala, Petris, Beverly and  
24 Lewis:

25 "The undersigned are elected officials serving on  
26 various boards of the San Mateo County Mid-Coastside. Our local  
27 sewage treatment plant is regulated by the San Francisco Bay  
28 Regional Water Quality Control Board. The appointee, John



1 Muller, and his immediate family own or control significant  
2 amounts of undeveloped land in this area."

3 SENATOR AYALA: What are significant amounts?

4 MR. PERKOVIC: I believe that the gentleman who will  
5 speak later will show you actual parcel maps and additional  
6 information that documents the property ownership and the  
7 transfer dates, which are, coincidentally, very close to the  
8 date of appointment.

9 "The Regional Water Quality Control Board decisions,  
10 enforcement actions, and influence can easily impact the value  
11 of such land.

12 "As a result of its conflict of interest potential, we  
13 feel that confirmation of this appointment by the Rules  
14 Committee is not appropriate.

15 "We appreciate your consideration of our input on this  
16 matter."

17 And the signatories are Dennis Coleman and Carol Cupp,  
18 members of the City Council of the City of Half Moon Bay, James  
19 Marsh and Richard Lohman, members of the MidCoast Community  
20 Council, which is a community advisory council to the San Mateo  
21 County Board of Supervisors, and Kathryn Slater Carter and  
22 myself, Paul Perkovic, who are elected members of the Montera  
23 Sanitary District Board.

24 If I may elaborate on the letter as a personal matter  
25 not speaking on behalf of the co-signatories, I don't believe  
26 any of us is questioning the personal background or knowledge of  
27 Mr. Muller. I think he would be a fine appointment for a  
28 position in which his judgement was not brought to bear on

1 matters that would have a direct influence on his personal  
2 property holdings.

3 I think that he, just as everyone else who a resident  
4 of that community, has a right to advocate matters to their own  
5 personal economic interest, and that they can seek to develop  
6 their property to its highest beneficial use.

7 However, I think it is inappropriate and represents a  
8 significant conflict of interest and a breach of the public  
9 trust -- and in fact, I was just reading your slogan today, "It  
10 is duty of the Senators to protect the liberty of the people" --  
11 for a person who has a direct financial interest in the  
12 decisions of a board or a commission to be a participant.

13 And it's on those grounds, and I believe those grounds  
14 alone, that we, as elected officials covering roughly 20,000  
15 people in the a portion of the MidCoast side, which is, in fact,  
16 only as I can acknowledge, a part of the entire area that is  
17 under the jurisdiction of the San Francisco region, feel that  
18 this appointment is inappropriate.

19 I urge that if you deny the appointment, that you  
20 recommend to the Governor that this candidate be considered for  
21 some other future appointment to a board or commission where he  
22 may have an opportunity to serve the public, but would not be  
23 put in a position of conflict of interest, or a position where  
24 the suspicion of conflict of interest may arise.

25 I believe that it's very important that you preserve  
26 the public trust in the integrity of our governmental  
27 operations, and urge you very strongly to turn down this  
28 appointment.

1 I thank you, and if you have any questions, I'd be  
2 happy to answer those.

3 CHAIRMAN LOCKYER: Just a couple.

4 Have there been any issues that you're aware of before  
5 the Regional Board in the last several months that would raise  
6 the question of a potential conflict?

7 MR. PERKOVIC: Yes. The Sewer Authority MidCoast Side  
8 has been operating under a cease and desist order which was  
9 entered into approximately a year ago.

10 CHAIRMAN LOCKYER: Who was it?

11 MR. PERKOVIC: The Sewer Authority MidCoast Side.  
12 That's the wastewater treatment plant that serves the City of  
13 Half Moon bay, the Granada Sanitary District, and the Montara  
14 Sanitary District. Those are the areas that are represented by  
15 the signatures on this letter.

16 The Sewer Authority MidCoast Side Board has been  
17 considering alternatives that may be more economically feasible,  
18 long-range solutions to the water treatment needs, wastewater  
19 treatment needs, of the community.

20 The current rate of build out that's permitted under  
21 the City of Half Moon Bay's local coastal plan and the County of  
22 San Mateo's local coastal plan indicates that the capacity that  
23 has been designed in the current plant expansion will last for  
24 roughly 25 years, at the current rates of growth, 20 to 25  
25 years.

26 There was some consideration by members of the Sewer  
27 Authority MidCoast Side Board on whether the plant could more  
28 economically be expanded in multiple phases, so that there could



1 be an initial expansion now that would satisfy the discharge  
2 problems, where current users during wet weather flows, there  
3 are some discharges that have exceeded the national waste --  
4 NWPES permit, the national wastewater pollution discharge  
5 permit, requirements for that treatment plant. And among the  
6 options was scaling back to meet the peak wet water needs of the  
7 current users with a much smaller expansion capacity.

8 That plan was being discussed by members of the Sewer  
9 Authority MidCoast Side Board. There's a letter -- I don't have  
10 it directly in front of me -- which appeared at the Sewer  
11 Authority MidCoast Side. It's my understanding, very shortly  
12 after Mr. Muller attended one of the Sewer Authority meeting and  
13 I had not had an opportunity to speak to him at that time, and  
14 the inference taken by some members of the board was that there  
15 had been some influence brought to bear on the Executive  
16 Director to cause a very strongly worded letter to come forward.

17 And Mr. Coleman --

18 CHAIRMAN LOCKYER: The letter came from?

19 MR. PERKOVIC: From the Regional Water Quality Control  
20 Board.

21 CHAIRMAN LOCKYER: About this issue?

22 MR. PERKOVIC: About the proposed expansion.

23 CHAIRMAN LOCKYER: And the Regional Board would have  
24 had to have approved their change in plan, I assume?

25 MR. PERKOVIC: My understanding is that this was a  
26 staff letter that came out from the Executive Director. And  
27 that that item had not gone for a Board vote. Although, I was  
28 not present during that proceeding.



1 CHAIRMAN LOCKYER: At some point, it would have had to  
2 have gone to go Board for an approval?

3 MR. PERKOVIC: What would have gone to the Board would  
4 be a change in the schedule of the cease and desist order. So,  
5 if the Sewer Authority MidCoast Side, with -- in consultation  
6 with our consulting engineer organization, Acrillo Engineers,  
7 and looking at the build-out rates that are anticipated and the  
8 needs of the three districts, if it had been possible to  
9 configure a smaller plant project, which would have cured the  
10 current discharge violations and also provided an interim  
11 expansion capacity, that was going to require some redesign  
12 time. And the Sewer Authority MidCoast Side staff had been  
13 working with the Regional Water Quality Control Board staff,  
14 it's my understanding again, to try to be able to accommodate a  
15 potential redesign effort that would save the three districts a  
16 significant amount of money.

17 The project was originally budgeted at approximately  
18 \$22 million. The district that I'm on the board of had our  
19 assessment district, that was intended to produce about  
20 five-and-a-half million dollars of the funding, challenged in  
21 court and it was overturned just before the project was intended  
22 to go out to bid. So, the Sewer Authority was left about  
23 five-and-a-half million dollars short of the funding and was in  
24 desperate need of looking at alternative means to meet the  
25 discharge requirements, and also to provide for a reasonable  
26 future growth in the community.

27 But it was not necessary, in the opinion of at least  
28 some of the members of the Sewer Authority MidCoast Side Board,

1 to go to the full potential build-out of the maximum capacity  
2 that will ever be reached in that portion of San Mateo County.

3 I'm sorry, I believe I interrupted you. I apologize.

4 CHAIRMAN LOCKYER: My question was, this didn't  
5 actually go before the Board for a vote, but it's perhaps  
6 illustrative of the type of issue that might raise a conflict?

7 MR. PERKOVIC: That's correct, sir.

8 This particular issue had not gone before the Board.  
9 The cease and desist order itself, many months before, had gone  
10 before the Board, and that was before Mr. Muller's appointment  
11 to the Board.

12 CHAIRMAN LOCKYER: You probably are familiar with the  
13 law because it's one you would have to observe as well, but just  
14 to make it clear, the conflict rules require abstention if  
15 there's a personal interest in a decision that might be made.

16 I seem to recall we had the case of Gary Burke from the  
17 Silicon Valley who was employed by the Manufacturing  
18 Association, and virtually all of his members had some issue  
19 before. That raised a question not of the conflict potential,  
20 but whether he was, according to Leg. Counsel, even legally able  
21 to take the position, whether it filled the right slot or not.

22 MS. MICHEL: Right, and he was not.

23 CHAIRMAN LOCKYER: I have not seen in my experience the  
24 potential of a conflict being debilitating, only an issue raised  
25 when a person does not do what the law requires in abstaining if  
26 there's a relevant issue that affects a person holding an  
27 interest.

28 But I understand your point, and I thank you, sir.

1 MR. PERKOVIC: Certainly, there is some concern that  
2 there would be influence that a member of the Board would have  
3 on the staff that report to that Board. Just as, in my case,  
4 since I'm a member of our board and we have our own staff, if  
5 there were an issue that I had a direct significant financial  
6 interest in, I'm sure members of the community would be  
7 concerned that my daily working relationship with our staff may  
8 tend to color their behavior, even though I might not vote when  
9 that came to a board meeting. So, that's one of the concerns in  
10 the community.

11 SENATOR AYALA: The gentleman's representing irrigation  
12 and agriculture. It deals with the California Water Quality  
13 Control Board.

14 As I recall, quality control deals with potable water,  
15 whether on the surface or underground, doesn't make any  
16 difference. In this position it has to be someone who is  
17 knowledgeable of irrigation and agriculture.

18 Where are you going to find someone that doesn't have  
19 land within that district? Are farmers going to be declared  
20 ineligible simply because they have land to be developed? All  
21 they're dealing with is with the quality, not source to an area  
22 or moving of water flows. It's just quality. You're concerned  
23 about the quality of water, and again, to be redundant, whether  
24 it's underground or surface water.

25 And this position calls for a person who deals with  
26 irrigation and agriculture. Where are you going to find someone  
27 that doesn't have acreage to deal with farming and irrigation?

28 MR. PERKOVIC: Well, Senator Ayala --



1 CHAIRMAN LOCKYER: This is the guy responsible, or  
2 some predecessor, for finding the county that you live in.  
3 Captain Ayala found the San Francisco Bay --

4 SENATOR AYALA: Let's start with those bases.

5 [Laughter.]

6 SENATOR AYALA: My question was, if we're dealing with  
7 someone to represent on that quality control board which deals  
8 strictly with quality, nothing else. I'm aware the Water  
9 Control Board deals with bringing water to people. This is just  
10 devoted to the quality of the water that's potable and  
11 otherwise.

12 I suppose that you're going to have a hard time finding  
13 someone that's going to have some kind of conflict if he owns  
14 acreage within that region that is knowledgeable of irrigation  
15 and agriculture.

16 MR. PERKOVIC: Well, quite frankly, Senator, I don't  
17 think it should be that difficult a problem because of the way  
18 the San Mateo County local coastal program is written. And in  
19 furtherance of the Coastal Act, a significant amount of the  
20 County area that is along the coast is very strongly protected  
21 for preservation towards agricultural uses. It's outside the  
22 urban-rural boundary. It is protected by the local coastal  
23 program in such a way --

24 SENATOR AYALA: And who owns --

25 MR. PERKOVIC: That land may be owned by farmers and  
26 other agricultural interests.

27 SENATOR AYALA: They're ineligible, according to what  
28 you're saying.



1 MR. PERKOVIC: No, what I'm about to say is that the  
2 zoning restrictions and the local coastal program and plan for  
3 large areas of the agricultural coast would prevent the  
4 development and subdivision and sale of those portions of land  
5 as condominiums, or as homes, or as other intense development  
6 uses that would tend to have a very high profit potential for  
7 the land developer.

8 I understand that Mr. Muller's land is under Williamson  
9 Act provisions so that it would not be eligible for development  
10 for ten years, or something like that. I'm not an expert by any  
11 means.

12 SENATOR AYALA: If they're under contract.

13 MR. PERKOVIC: I'm not an expert by any means on that.

14 However, our understanding is that that there are  
15 holdings within the city limits of the City of Half Moon Bay,  
16 inside the urban rural boundary, that the zoning is such that,  
17 at some point in the future, it would be eligible to be upgraded  
18 for dense urban use, and therefore, there's a very high  
19 potential for economic benefit if adequate water and sewer  
20 supplies are ensured for that community.

21 Now, I concur that it's important that the water  
22 quality be managed properly. And I have not had an opportunity  
23 to examine Mr. Muller's technical background, whether his  
24 educational background includes environmental science, or  
25 chemistry, or physics, a specialized degree that would indicate  
26 professional competence in soils engineering or geology that  
27 might be relevant for informed professional judgement on those  
28 matters as they come before the Board.

1 Nor am I aware of whether there might be other people  
2 in the community who would be equally or better qualified.

3 However, I do believe there would be other  
4 agriculturally competent people who are involved in irrigating  
5 their agricultural lands who live in an area where they would  
6 not have the potential of a direct financial benefit from their  
7 decisions.

8 My understanding is that in addition to the wastewater  
9 disposal, that this Board also has jurisdiction over water  
10 supply issues, and that groundwater development, things like  
11 that.

12 SENATOR AYALA: No, I don't think so. That's the  
13 Resources Control Board that does that, the Water Resources  
14 Control Board under Mr. Kennedy.

15 MR. PERKOVIC: There's no concern about impacts?

16 SENATOR AYALA: They're not involved with the quality  
17 of water. Their only concern is bringing water to where it's  
18 needed.

19 Control Board we have referenced here, the Quality  
20 Control, deals strictly with quality.

21 How is that going to conflict with his acreage? A lot  
22 of people that have acreage, and there has to be someone,  
23 according to what I read here, from irrigation-agriculture.

24 You're eliminating a lot of people who are very  
25 qualified to do the job of getting quality water, not quantity.

26 MR. PERKOVIC: One of the possible sources of water  
27 supply is by well irrigation. And a concern that has been  
28 raised in the community is that if there is overdraft of the

1 groundwater through irrigation wells that serve the agricultural  
2 community, especially right along the coast, there's a  
3 possibility of salt water intrusion into the water supply that  
4 also serves the domestic water supply needs of the public.  
5 That's been a problem in the Carmel Valley, as I'm sure you're  
6 aware.

7           SENATOR AYALA: This Board you're referring to, San  
8 Francisco Bay, is mostly concerned with the quality of the Bay  
9 water quality, and the Control Board is now having hearings to  
10 see what standards they're going to put in the Bay as they  
11 pertain to quality. I don't know how quality would have to do  
12 with quantity or where it goes. That's Resources Control Board  
13 that is does that, Water Resources under Mr. Kennedy.

14           MR. PERKOVIC: I would think there would be a concern  
15 if the character of the water that was the domestic water supply  
16 for a community were -- became saline because of salt water  
17 intrusion, and thus, undrinkable.

18           SENATOR AYALA: That's where they come in.

19           MR. PERKOVIC: At least one of the possibilities within  
20 our service area, the service area of the three communities for  
21 assisting and preventing that would be further development of  
22 the treatment facility so that we'd be able to use reclaimed  
23 water for some agricultural uses, as an example.

24           I had an opportunity to have brief chat with  
25 Mr. Muller --

26           SENATOR AYALA: Other Members might have questions.  
27 Thank you.

28           CHAIRMAN LOCKYER: Other questions from anyone.



1 Thank you, sir.

2 MR. PERKOVIC: Thank you.

3 CHAIRMAN LOCKYER: I believe I saw another hand raised.

4 Yes, sir.

5 MR. COLEMAN: Good afternoon, Senators. My name is  
6 Dennis Coleman. I'm a member of the Half Moon Bay City Council.

7 I appreciate the opportunity to speak on this item. I  
8 am not a tree kisser, or a whale hugger, or any of those terms.  
9 I'm a businessman. As a matter of fact, I'm a Republican by  
10 registration.

11 This is going to come down to your judgement call. All  
12 I can say is what I know, and that I have no financial interest  
13 in saying what I'm saying.

14 The Regional Water Quality Board has jurisdiction over  
15 San Mateo County Coastsides, which includes the City of Half Moon  
16 Bay, and it has 22,000 residents. The geography and the natural  
17 barriers, and the limited water and infrastructure of that area  
18 has resulted in very measured, very slow development, and what  
19 we regard as a very precious natural resource and a strong card  
20 for us to play in the future.

21 Under current zoning, the value of development which  
22 could occur on our 50 percent of land that is not yet built out  
23 is \$3 billion, with a B. Three billion dollars.

24 I was elected as a reform candidate in November, 1995  
25 to bring a business-like evaluation to our land use instead of  
26 the traditional, what I regard as the good-old-boys network of  
27 deciding things. I'm trying to avoid even the appearance of a  
28 conflict of interest surrounding land use and infrastructure



1 decisions of this magnitude.

2 For that reason I oppose the confirmation of this  
3 appointee. I would oppose Mother Teresa if she and her family  
4 had control of this much undeveloped land in the city of Half  
5 Moon Bay. This is not personal at all. This is a matter of  
6 public confidence in the government.

7 The facts speak for themselves. Mr. Muller and his  
8 immediate family own or control at least 20 acres of undeveloped  
9 land within the city limits of Half Moon Bay. This land is  
10 zoned agricultural and open space preserve, both of which  
11 designations can be converted to residential development in the  
12 long term.

13 Mr. Muller's economic interests do not appear to have  
14 been completely reported on the forms required by state law.  
15 These include real estate, business, trust, and lines of credit  
16 interest over and above the residence and business income  
17 claimed.

18 The value of the Muller and family lands can benefit  
19 greatly from long-term availability of surplus sewer plant  
20 capacity, which as Mr. Perkovic just explained, is strongly  
21 influenced by the Regional Water Quality Board's enforcement of  
22 a July, '95 cease and desist order.

23 Various elected officials, including myself, have seen  
24 indications of influence over the Regional Quality Board's staff  
25 activities, beginning in January, 1996, one month after  
26 Mr. Muller's appointment.

27 Mr. Muller and his immediate family have shown a  
28 consistent pattern of promoting residential development and its

1 infrastructure on the coast side. Examples include  
2 participation of the family in the development of Half Moon  
3 Bay's "houses everywhere" land use plan in the years 1968 to  
4 1980; participation of the family in supporting the Crystal  
5 Springs pipeline project which brings more water for houses into  
6 the coast side, as well as the Coast Side County Water District  
7 Board. That was between 1990 and 1994.

8 Mr. Muller's own participation since December, '95 in  
9 influencing the Regional Water Quality Board's staff to increase  
10 the vigor of their enforcement action, and finally, the family's  
11 support of the Caltrans Devil's Slide bypass proposal.

12 The appointee may say that the Water Quality Board has  
13 not met on any item concerning our Sewer Authority since  
14 December, '95, and that would be correct. But I have seen  
15 personally the indirect influence of behind the scenes  
16 activities on the Water Quality Board's staff and their  
17 enforcement.

18 Our negotiation with them stopped cold on  
19 February 8, 1996, when we received a letter from the Water  
20 Quality Board threatening us that we could not take the time to  
21 design a smaller plant that we could afford. If we did that  
22 that time, they would begin fining us. Prior to that date, they  
23 had been open to negotiation on that.

24 That letter occurred roughly two weeks after Mr.  
25 Muller's attendance at a Sewer Authority MidCoast board  
26 meeting. I am on that board. He saw the plant manager report  
27 that there was flexibility in the enforcement action, that we  
28 could consider a smaller plant. That was stopped. Our board

1 was prevented from considering an item of vital importance to  
2 our community by that letter on February 8th from the Executive  
3 Director of the staff of the Water Quality Board.

4 The appointee may say that the appointment is for  
5 agricultural seat on the Board, but that seat can still impact  
6 decisions and influence of the Water Quality Board over the area  
7 where the appointee's family has large land assets.

8 The appointee may say that the land is zoned  
9 agricultural and open space reserve and is now used for growing  
10 flowers, but it can all be converted for residential development  
11 if surplus sewer capacity exists in the long term.

12 Finishing up, the appointee may say that he would  
13 recuse himself from any decisions of the Water Quality Board  
14 concerning the Sewer Authority MidCoast. But history says that  
15 Mr. Muller and his family have never recused themselves in the  
16 past from decisions impacting residential growth in the coast  
17 side.

18 In closing, the choice between conflict of interest, or  
19 potential conflict of interest, and lack of representation by  
20 the appointee recusing himself is not acceptable to the voters  
21 that I represent. There must be a better candidate for a board  
22 That the coast side is so sensitive to. Give the Governor the  
23 opportunity of finding one.

24 I urge you not to confirm this appointment. Thanks for  
25 considering my input, and I would answer any other questions.

26 CHAIRMAN LOCKYER: Let me ask, are there questions? I  
27 guess not.

28 Thank you, sir. We appreciate it.



1           Are there others that wish to comment at all for or  
2           against the confirmation.

3           I have a couple more general questions, but if you  
4           would wish to comment on any of the prior testimony, now is, I  
5           guess, an appropriate opportunity if you would care to.

6           MR. MULLER: I will answer your questions,  
7           Mr. Chairman.

8           CHAIRMAN LOCKYER: One of the sort of generic problems  
9           that seems to have occurred or developed over the years is that,  
10          because the funding sources for the boards have become so  
11          earmarked, there are dozens and dozens of little funding  
12          streams and permit fees, and so on, that seems to have affected  
13          the kind of program that, if you will, comes out the other end  
14          of the board decision making. And the activities seem to get  
15          compartmentalized consistent with the funding sources.

16          Have you noticed constraints of that sort in any of the  
17          decision making that you've yet had to address?

18          MR. MULLER: No, sir.

19          CHAIRMAN LOCKYER: And so, I think there has been in  
20          recent months or years a push by the State Board to do more  
21          monitoring and repermitting, rather than just enforcement  
22          activities, partly because the enforcement is of old permits,  
23          and they may not be updated.

24          Has that tension been experienced on your board?

25          MR. MULLER: I believe our Board, representing Region  
26          Two, we have a basin plan which is one of the first in the state  
27          that we're very proud of that I did not even work on.

28          CHAIRMAN LOCKYER: Was it before you?



1 MR. MULLER: Yes, sir. We enforce Porter-Cologne. We  
2 enforce the Clean Water Act, and we do everything in our power  
3 to enforce people that have caused infractions for water quality  
4 in the San Francisco Bay Region.

5 CHAIRMAN LOCKYER: What's been the is most difficult  
6 decision you've had to make so far as a board member? Does any  
7 come to mind?

8 MR. MULLER: Probably giving extension to a landfill in  
9 Marin County, where this landfill was not lined and was  
10 permitted under a not lined permit. The family losing all their  
11 assets, and what do you do with the landfill? Where do we take  
12 this problem? That's a very serious problem.

13 The selenium and dioxin with our refineries in our Bay  
14 Region is very, very important to all of us that live in  
15 California. And these are some difficult decisions because we  
16 do need petrols.

17 CHAIRMAN LOCKYER: What happened with the landfill  
18 issue?

19 MR. MULLER: We've given them one month extension to  
20 come back with a better report on why they are not following up  
21 on their reports, and we're looking at the community to do a  
22 better job on what they want to do with their waste, how they  
23 want to transfer it out of the area and not use the Martinelli  
24 landfill.

25 CHAIRMAN LOCKYER: So, no final decision yet?

26 MR. MULLER: Not on the Martinelli landfill, no, sir.

27 CHAIRMAN LOCKYER: And the selenium and other such  
28 problems, has there been an issue before the Board in last

1 several months?

2 MR. MULLER: If I can remember correctly, sir, we did  
3 have some high contents of selenium reported by Bay Keepers,  
4 which is a watch-dog group that watches over the Bay.

5 CHAIRMAN LOCKYER: Have you had to do something about  
6 that?

7 MR. MULLER: We've had some mitigation with the  
8 refineries that have been responsible for the high levels. What  
9 we're doing with some great restoration projects in creeks in  
10 different areas with the mitigation fees are wonderful. We just  
11 had a classroom come in the last meeting and explain to us what  
12 they've done to mitigate this creek, and to clean it up, and the  
13 things we all should be doing in California.

14 CHAIRMAN LOCKYER: How much time do you think you  
15 devote to service on the Board of a week or a month.

16 MR. MULLER: We get our packet, like all of you get,  
17 that big binder. I spend usually all day Sunday working on it.

18 I'm in the flower business. I get up at midnight every  
19 other night, so I will get up at midnight on Tuesday nights, go  
20 to the flower market. My wife will relieve me about 5:00 a.m.  
21 and I'll shower, and put a suit on, and go to this meeting in  
22 Oakland and put in another six or seven hours.

23 CHAIRMAN LOCKYER: So, this is every week basically?

24 MR. MULLER: No, sir. Our Board meets once a month,  
25 the third Wednesday, and also -- unless special meetings.

26 CHAIRMAN LOCKYER: So, a day-and-a-half or so a month.

27 MR. MULLER: Minimum, I'd say, two days a month.

28 CHAIRMAN LOCKYER: Senator Ayala.

1           SENATOR AYALA: Again, Mr. Chairman, I don't understand  
2 the argument against the gentleman simply because he owns 20  
3 acres in that region. I don't know how big that region is. The  
4 area I represent is the San Bernardino Water Quality Control  
5 Board --

6           CHAIRMAN LOCKYER: You couldn't find 20 acres in your  
7 district.

8                               [Laughter.]

9           SENATOR AYALA: Let me tell you, I have about 500  
10 dairies, and each one goes from 20 acres to 300 acres. They  
11 want to have a dairyman on that board so they can understand the  
12 problems, the issues that go before that board that deal with  
13 the dairy industry.

14           Twenty acres out of how many acres do you represent  
15 sir, all together?

16           CHAIRMAN LOCKYER: The whole Bay Area. It's within,  
17 and part of the concern is, it's within the city, 29,000  
18 population. I don't know what the acreage would be, or the open  
19 space acreage of Half Moon Bay.

20           Do you have any guess about that?

21           MR. MULLER: Senator Ayala, John and Anita Muller own  
22 1.5 acres, and our family owns 18 acres. And our family's been  
23 there for 50 years.

24           CHAIRMAN LOCKYER: So, you own one-and-a-half acres?

25           MR. MULLER: Are owned personally by John and Anita  
26 Muller.

27           CHAIRMAN LOCKYER: And who is the --

28           MR. MULLER: My wife's family, my father and



1 mother-in-law.

2 CHAIRMAN LOCKYER: They own the other?

3 MR. MULLER: Eighteen-point-some acres.

4 SENATOR AYALA: I would be concerned if the appointment  
5 was to the Water Control Board, the California Water Commission,  
6 which advises the Director of Water Resources, Mr. Kennedy, more  
7 so than on the quality.

8 I don't know what he can do to better his position in  
9 terms of potential development by giving better water to the  
10 whole city, quality water. I don't understand. There's not  
11 anymore volume. They're dealing strictly with quality.

12 CHAIRMAN LOCKYER: Is all the acreage encumbered by  
13 Williamson Act?

14 MR. MULLER: That's correct, sir.

15 CHAIRMAN LOCKYER: And you've not given notice of  
16 intent to withdraw, or anything?

17 MR. MULLER: Our family's been in since May of 1996  
18 [sic]. We're one of the original contracts in San Mateo County.  
19 We're not going anywhere.

20 CHAIRMAN LOCKYER: I guess for the record I'd like to  
21 have you comment at least on the possibility of issues coming  
22 before the Board that might impact your community, not just your  
23 own personal property, but Half Moon Bay.

24 Do you have a sense of what the appropriate behavior  
25 would be in those circumstances?

26 MR. MULLER: I think the only major issue that could  
27 possibly affect me on this Board is, we have the Los Trancos  
28 landfill, again, a major landfill in the San Francisco Bay Area,



1 Ox Mountain dump. It is a lined dump, but it is on tributaries  
2 that feed my creek. That possibly could be the only one.

3 The sewer facility that I never voted on has outfall  
4 into the ocean, which I'm very concerned about water quality. I  
5 don't think that will come before us again. And if it would, I  
6 understand the rules of serving on boards and committees, and I  
7 would not vote or influence anyone.

8 CHAIRMAN LOCKYER: I note that there were these errors  
9 in the forms you had to fill out upon assuming office. Since  
10 that time, you've amended your form.

11 But so I could here some comment on this, first it asks  
12 investments not held by a business entity. Initially you  
13 thought you didn't have to report that. Was there an investment  
14 not held by a business entity that you subsequently -- it was  
15 explained to you, or how does this work?

16 MR. MULLER: I think I didn't realize it at that time.  
17 I think we have a line of credit on our house for an emergency  
18 purpose in agriculture. We had two daughters in college. We've  
19 never used that line of credit. That's only thing I could  
20 figure.

21 CHAIRMAN LOCKYER: That was the nature of the  
22 investment?

23 MR. MULLER: To my knowledge that would be one of them.

24 CHAIRMAN LOCKYER: Business positions?

25 MR. MULLER: Business positions, I'm not sure exactly.  
26 We own Daylight Nursery. We don't own the property. Our family  
27 owns the property.

28 They are doing some future estate planning to my wife

1 and myself so we can keep it in agriculture in the future.

2 CHAIRMAN LOCKYER: Are there other questions.

3 Did you want to say anything in conclusion?

4 MR. MULLER: Just thank you very much for this  
5 opportunity to be here, and I would hope I would be confirmed.  
6 I want to serve our government to the best of my ability, and I  
7 will always uphold all the laws of our country.

8 CHAIRMAN LOCKYER: What's the pleasure?

9 SENATOR BEVERLY: I'm in agreement with Senator Ayala's  
10 observation. I move we recommend confirmation.

11 CHAIRMAN LOCKYER: I guess I might say, just as a  
12 general matter, I start somewhat critically of Governor Wilson's  
13 appointees. I just generally have lots of philosophical  
14 disagreements.

15 And I can understand the reason for concerns of those  
16 in the area that can at least see the potential for undue  
17 influence on Water Board or other local agency decisions.

18 But I'm forced to conclude that there isn't sufficient  
19 evidence of misdeeds or conflict that's so pervasive that it  
20 would be impossible to serve in an adequate way.

21 I think everything one has agreed, Mr. Muller, that  
22 you're a man of high integrity and good intentions.

23 My only other recommendation to those who were  
24 concerned is that it would seem to me, to the extent that the  
25 concerns were laid to potential land use and worries about  
26 overdevelopment, that in San Mateo County the best way to avoid  
27 that risk is to see that there's a healthy agricultural sector.  
28 If they're healthy and viable businesses, that more than

1 anything is probably going to be the best buttress to  
2 overdevelopment.

3 But anyhow, that's my only thought about the matter.  
4 We have motion before us. Okay, call the role.

5 SECRETARY WEBB: Senator Ayala.

6 SENATOR AYALA: Aye.

7 SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator  
8 Petris.

9 SENATOR PETRIS: Aye.

10 SECRETARY WEBB: Petris Aye. Senator Beverly.

11 SENATOR BEVERLY: Aye.

12 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

13 CHAIRMAN LOCKYER: Aye.

14 SECRETARY WEBB: Lockyer Aye. Four to zero.

15 CHAIRMAN LOCKYER: Good luck.

16 MR. MULLER: Thank you, sir.

17 CHAIRMAN LOCKYER: Next is Victoria Bradshaw to be  
18 considered as appointee to the Director of the Department of  
19 Employment Development.

20 Did you want to start at all with any general  
21 statement?

22 MS. BRADSHAW: I have an opening statement.

23 First of all, good afternoon. I'm Victoria Bradshaw,  
24 and it's a pleasure being here this afternoon. As you're  
25 probably already aware, I'm the Director of the Employment  
26 Development Department, which is also commonly called EDD.

27 EDD is responsible for several state programs, the  
28 administration of those programs: job service, unemployment



1 insurance, disability insurance, and the collection of  
2 unemployment -- or employment related taxes.

3 In addition, EDD is the state's administrator of the  
4 Federal Job Training Partnership Act in California which  
5 provides training for disadvantaged or economically  
6 disadvantaged workers and dislocated workers.

7 EDD is also a major source of statewide and local labor  
8 market information.

9 EDD, like almost all departments in state government  
10 these days, has some significant and interesting challenges  
11 ahead, and for EDD those include: federal block grant  
12 legislation; federal budget cutbacks, which for EDD in this year  
13 alone accounts for more than \$45 million in administrative  
14 cutbacks.

15 We are looking to ensure that we find additional ways  
16 to increase services to our constituencies, despite these  
17 dwindling resources. We are developing safeguards to ensure  
18 that we can effectively take our department, as well as other  
19 governmental issues, off of auto pilot, and we're making sure  
20 that the challenges to individual communities are not only  
21 recognized but dealt with.

22 We're also trying to ensure that the concept of  
23 one-size-fits-all is not necessarily appropriate for our  
24 customers any longer.

25 Prior to being appointed the Director of EDD, I was  
26 California State Labor Commissioner, which was my first venture  
27 into the public sector, and I was proud to serve as the first  
28 woman Labor Commissioner in the history of the State of



1 California since that position was created in 1881.

2 As State Labor Commissioner, I believe my organization  
3 made several important contributions to the people of  
4 California, including working for passage of the omnibus child  
5 labor bill, which we believe tried to create a balance between  
6 developing healthy work ethics in our children as well as not  
7 sacrificing their educational opportunities. We created  
8 partnerships with other enforcement agencies to ensure that  
9 there was an increase of labor law enforcement, despite the  
10 general fund cutbacks that we saw over the previous five years.

11 As an example of that, so that budget cutbacks did not  
12 necessarily translate into reductions in services or  
13 enforcement, despite over a 20 percent increase [sic] in our  
14 funded staff positions, we were able to increase wage  
15 collections in our Public Works Unit by over 35 percent, and  
16 increase collection in our penalties by over 17 percent. This  
17 is in spite of having a 20 percent reduction in staffing, when  
18 you compare that period to the previous five years prior to my  
19 tenure as Labor Commissioner.

20 One of the important things I think we also did was  
21 require that all of our investigators and staff look at -- honor  
22 the due process rights all the people, the citizens who came  
23 before us, and to look at each case based on the facts, not  
24 necessarily just the allegation, the innuendoes, the  
25 suppositions, but what really was happening in any particular  
26 case irrespective of which side of the argument was being  
27 presented.

28 We also mounted an effective campaign to make sure that

1 more information was available to our employers, on the belief  
2 that most employers would do the right thing if they just knew  
3 what it was. At the same time, we tried to focus our  
4 enforcement efforts on those employers who were actually causing  
5 the problem so that we would have -- we would be able to make  
6 sure that our resources were being used more effectively.

7 And wherever possible, we tried to work out compromises  
8 with the many conflicting constituencies, all of whom thought  
9 they had the right answer. I often said to my staff, I thought  
10 we were either trying to herd cats or we're running a  
11 kindergarten many times when we tried to bring parties together.

12 However, one of the most interesting events of my life  
13 occurred during my tenure as Labor Commissioner, and this month  
14 is the first anniversary of that event. If you'll bear with me  
15 for just a moment, I'd like to take a few moments just to  
16 recount to you what happened primarily because I think it is a  
17 good indication of what public agencies can do when they work  
18 together. At the same time, it's illustrative of some of the  
19 opportunities and challenges that still face us in the public as  
20 well as private sector.

21 One of the investigators in the Labor Commissioner's  
22 Office in Los Angeles was working in the Targeted Industries  
23 Partnership Program, which was one of those collaborative,  
24 multi-agency efforts I just referred to. Anyway, this  
25 individual got a tip on an illegal garment manufacturing  
26 operation in El Monte.

27 We immediately began surveillance on that particular  
28 operation. What made this unusual was that the tip said that

1 the people that were working there were being held against their  
2 will.

3 After several days of investigation, we found out that,  
4 in fact, that was some pretty unusual activity, and that the  
5 information that we'd received appeared to be accurate, and that  
6 it involved some confiscated passports. Of course, we didn't  
7 have jurisdiction over passports, so we called INS to bring them  
8 into the operation. And much to our surprise, we found out that  
9 the investigators with the INS already knew about this and had  
10 been doing surveillance at this apartment complex periodically  
11 during the previous three years.

12 Anyway, to make a long story short, we put together an  
13 enforcement effort involving 60 peace officers from six  
14 different state, local, and federal agencies, with the idea that  
15 we would do the enforcement action on October 2nd of 1995.

16 Twelve hours before we were scheduled to begin the  
17 operation, I received a call from the U.S. Attorney in Los  
18 Angeles informing me that the operation was being called off.  
19 After explaining to the U.S. Attorney that she didn't have the  
20 authority to call off the operation because we were going in  
21 under state search warrants rather than federal search warrants,  
22 we tried to keep the INS in the operation. And after discussing  
23 it with them for five hours, they pulled out anyway.

24 With the INS formally backing out only hours before we  
25 were scheduled to go in, we had to replace the 25 peace officers  
26 the INS was scheduled to bring in and 12 Thai translators, which  
27 I have to tell you is no easy feat, between 7:00 in the evening  
28 and 5:00 in the morning, to find 25 peace officers and 12 Thai



1 translators. But with the help of the L.A. and El Monte Police  
2 Departments and a Thai community group, the operation went on as  
3 scheduled. So, at 5:00 a.m. the next morning, as the electronic  
4 gates opened and the truck pulled out of the apartment complex,  
5 our peace officers went in, blocked the truck, disarmed the  
6 guard and the driver, and then systematically went in and  
7 searched each of the seven apartments in that complex.

8 What we found were 72 Thai nationals who were literally  
9 locked in, bolted into the five apartments. Some of them had  
10 been there for as many as seven years. Almost all of them were  
11 women. They worked from 7:00 in the morning --

12 CHAIRMAN LOCKYER: Why is it that you've chosen to  
13 dwell on this particular story? Because it was the one that was  
14 in the newspaper?

15 MS. BRADSHAW: I'm going to get to that.

16 CHAIRMAN LOCKYER: I'm just not sure that it's  
17 particularly relevant to your current job.

18 MS. BRADSHAW: Well, I was trying to show that I'm kind  
19 of a hands-on person, and then even when people say, you can't  
20 do it, when it's the right thing to do, you go in and get it  
21 done.

22 In this case what happened is, we had 72 people who had  
23 been working from 7:00 in the morning until midnight, seven days  
24 a week, 52 weeks a year, for seven years. And the INS didn't  
25 want to do it, but we went in and did it. And what we did is, we  
26 found over a million dollars in cash and jewelry. We went in  
27 the next day. We filed suit. We won the suit. We have turned  
28 over a million dollars back to those workers.



1           CHAIRMAN LOCKYER: I guess it's great you're hands-on,  
2 but it took six years of this administration to even find out  
3 about it. I guess that's not is such a great record.

4           MS. BRADSHAW: Well, it took us exactly five weeks from  
5 the point that we found out about it, and we went and did it, as  
6 opposed to the federal government, who knew about it and had  
7 done surveillance on it for three years, and pulled out.

8           My point, I guess, is that when -- even when there are  
9 obstacles and there is a problem, at least my experience is, you  
10 can get enough players together, and you can build a partnership  
11 to get the job done.

12           CHAIRMAN LOCKYER: Is there anyone present who can  
13 comment on the federal government's role?

14           If we're going to click into the Pete Wilson criticism  
15 of the feds versus the wonderful state operation, we're going to  
16 take some time with this nomination. So, somebody who's present  
17 better find out what the feds have to say, or get them here to  
18 testify at our next hearing. Roger, you can let them know when  
19 the next hearing occurs, which will probably be in December.  
20 We'll get into that.

21           What else do you want to say?

22           MS. BRADSHAW: Well, in my assignment, my new  
23 assignment, I think some of the strengths that I brought to my  
24 last assignment serve me well in this particular assignment.  
25 For example, I believe that I'm pro-active. I believe in  
26 building collaborative relationships. I believe that services  
27 should be relevant to the customers, and that information should  
28 be credible as well as cost effective.

1           In addition, like I said, I think that I, in fact, can  
2 be hands-on. That in a perfect example, I think, is the issue  
3 that Senator Hughes brought up. We got together with Senator  
4 Hughes and her constituencies. We worked through and identified  
5 what the real issues were. We came up with what I think are  
6 some pretty good and creative solutions. The result is,  
7 everyone is happy. We have a great, solid working relationship,  
8 and I've built a communication network that will allow all  
9 parties to successfully work in the future.

10           In the case of EDD, I believe that good employee  
11 relations, good business policy and good public policy are not  
12 mutually exclusive terms. And I think one of the strengths I  
13 have is bringing those pieces together to make sure that there  
14 are positive answers as opposed to necessarily negative ones.

15           CHAIRMAN LOCKYER: I want to wait until you conclude. I  
16 had some questions.

17           One of the challenges, I guess, that we need to work  
18 through is the federal change in both welfare and in job  
19 training. Could you bring us up-to-date? Let's start with job  
20 training, since that's less recent.

21           What are your thoughts, or what's happened to prepare  
22 for transitioning to the new block grant-type system?

23           MS. BRADSHAW: On the job training, the work force  
24 development, the federal block grant legislation, for all  
25 intents and purposes, is dead, which makes it a little more  
26 problematic to do things at the state level. It doesn't make it  
27 impossible, but certainly makes it a little more difficult.

28           There are 23 different state and federal training

1 grants that we have to deal with. And one of the things that is  
2 really required that we're really putting a lot of effort to is  
3 the One Stop, the idea that the citizens should not have to go  
4 to 15 different locations to get information, to get services,  
5 with regard to training or employment related information.

6 And so, existing legislation, as well as really the  
7 philosophy of where the state is, is that we're trying to  
8 create, help localities, local governments, put together One  
9 Stops, and bringing in different partners so that it becomes  
10 transparent to the citizens who is responsible for what. They  
11 can simply go to a single location and have a seamless --

12 CHAIRMAN LOCKYER: Has that happened yet?

13 MS. BRADSHAW: That is in the process of happening.  
14 Part of it is requiring legislation, but we received a  
15 development grant. We have applied for an implementation grant,  
16 but towards that end, out of the Governor's 40 percent  
17 discretionary money over the last two years, we've funded \$32  
18 million worth of projects. We have another 15 that we are  
19 scheduling, or we've put aside for this coming year with the  
20 idea to help local governments put together projects that are  
21 good for their locality. What's good in one location may not  
22 work in another. So, we're trying to let each community decide  
23 what's best for themselves.

24 Along with that is the School to Careers, where we also  
25 got a development grant, and we have applied for an  
26 implementation grant, and that really is a collaborative effort  
27 between the school systems, both the K thru 12, as well as the  
28 community college and the Employment Development Department.



1 CHAIRMAN LOCKYER: So, these are federal grants you  
2 applied for?

3 MS. BRADSHAW: Right.

4 CHAIRMAN LOCKYER: Is that how that works, from DOL or  
5 somebody?

6 MS. BRADSHAW: Right, U.S. Department of Labor.

7 CHAIRMAN LOCKYER: They're kind of in the works on One  
8 Stop and the School to Work preparation.

9 MS. BRADSHAW: Right.

10 On the welfare, which is a little more interesting  
11 since that now has been recently signed into law, EDD's role  
12 primarily is providing employment-related services or increased  
13 employment-related services to AFDC and food stamp recipients.

14 Now, in anticipation of this occurring, we began  
15 preparing for it actually seven or eight months ago. Along  
16 those lines, we began working to identify on a county by county  
17 basis, and where we could, even more refined than that, where  
18 the potential job opportunities were, where the growth was going  
19 to be, what occupations were going to be growing, what  
20 industries had potential, and then began focusing our job  
21 development efforts in those areas.

22 In addition --

23 CHAIRMAN LOCKYER: Was that not happening before?

24 MS. BRADSHAW: Yeah, but it really has been working  
25 with the local areas also, because job training now, while it's  
26 supposed to be geared to that, isn't necessarily pinpointed.  
27 There's another area that's a little bit -- makes it a little  
28 bit different. Most job training isn't geared to entry level,



1 and a lot of the AFDC recipients are going to be entry level.  
2 So, what we've tried to do is go back and look at those  
3 industries that will have a high number of entry level positions  
4 and focus there, as opposed to necessarily just the high tech  
5 areas, which tend to gets a lot of the attention.

6 What we've done is, we've just recently put out \$3.5  
7 million worth of grants to six different local communities to  
8 help do industry-specific training that's geared towards entry  
9 level, so we can begin moving-- seeing what works to move people  
10 who are currently on aid to these entry level jobs, but designed  
11 specifically to localities.

12 CHAIRMAN LOCKYER: Who received the grants?

13 MS. BRADSHAW: Los Angeles, Sacramento, Santa Cruz,  
14 Orange County, Mendocino and Merced were the ones that  
15 competed. The idea is to see what works.

16 CHAIRMAN LOCKYER: They were successful?

17 MS. BRADSHAW: Yes, they were successful.

18 CHAIRMAN LOCKYER: How many applied?

19 MS. BRADSHAW: There were probably twice as many that  
20 applied. Actually, some of them even that didn't get a grant  
21 did have some good ideas, and we're going to go back and look at  
22 those to see what we can do.

23 What we're trying to do is look at something different,  
24 because obviously, this is a different situation. A lot of  
25 training, as you know, is geared towards 16, 18, 20 weeks worth  
26 of training, and we're saying what can we do to design the  
27 training around what an industry needs on a very short-term  
28 basis so we can move people in and get them on the job training.

1           The other thing that we've done is, we created a new  
2 system that allows getting more information to more people, to  
3 make the connection with jobs to job openings. For example,  
4 we're piloting a new program in two cities to try to get  
5 businesses to give us entry level jobs to put on a system, and  
6 then allow the local welfare -- our Department of Social  
7 Services, the local welfare departments -- access to that  
8 information too, which we currently don't do. In less than ten  
9 days, we got a thousand jobs put into the system.

10           So, what we're trying to do is figure out something  
11 that going to get to the entry level jobs. And what we want to  
12 do is develop the system so we mainstream people, because we  
13 don't want to develop a system just for people who are on aid,  
14 but eventually anybody who's entry level, just coming out of  
15 high school, just coming out of community college, wherever,  
16 and then build a system that's multi-useful.

17           CHAIRMAN LOCKYER: How many positions are there, job  
18 possibilities, do you think in the whole system that that  
19 information is available to applicants?

20           MS. BRADSHAW: Well, I don't know exactly how to answer  
21 that. We've not done a good job of getting information on entry  
22 level jobs because most of the people who come to us for job  
23 service aren't interested in entry level jobs.

24           CHAIRMAN LOCKYER: That's what I was wondering. How  
25 many are entry versus the total?

26           MS. BRADSHAW: We know, for example, that we are  
27 expecting about a half million new jobs in the State of  
28 California through the year 2005. About 300,000 of that is

1 brand new jobs, and 200,000 are jobs where someone either  
2 retires or dies but does not go on to another job. They leave  
3 their job, and they don't move on to another one. Of those,  
4 about 60 percent require less than a high school education or  
5 less than a year of experience. So, it's a significant number.

6 CHAIRMAN LOCKYER: Any other responsibility that you  
7 would have with respect to the welfare reform proposal, other  
8 than trying to identify entry level jobs?

9 MS. BRADSHAW: Yes. There is a requirement -- well,  
10 labor market information, obviously, is supplying information  
11 and making it more available, and that we're trying to do now in  
12 terms of getting it on the Internet and making it more user  
13 friendly, so you don't have to be an analyst to figure out what  
14 it is.

15 In addition to that, there's a requirement to make --  
16 currently there's 17 occupations or 17 industries where we have  
17 to make the connection if there's child support due. That is  
18 being expanded. So, that goes to the effort of the new employee  
19 directory when you hire somebody when you hire somebody new.

20 CHAIRMAN LOCKYER: The D.A. sends you a list? How does  
21 that work?

22 MS. BRADSHAW: An employer has to report a new hire.  
23 We then make the match.

24 CHAIRMAN LOCKYER: You've got the list already. Do you  
25 get that from Social Services? How do you get the list of who's  
26 owing child support?

27 MS. BRADSHAW: We get it from a variety of sources. It  
28 now only deals with 17 specific industries. That's being



1 expanded. There'll also be some requirements, I assume, on the  
2 JTPA side in terms of who's going to be eligible for training.

3 Like I said, the unemployment insurance also will have  
4 some requirements in terms of if there's child support owed. A  
5 lot of the details haven't been fleshed out because it was just  
6 assigned this week.

7 CHAIRMAN LOCKYER: Anything else on the welfare reform  
8 implementation?

9 MS. BRADSHAW: We're doing a lot to increase the  
10 Intensive Services Program, and that's really to provide people  
11 who have significant barriers, to help them get beyond that, and  
12 we've changed the percentage from 25 to 75 percent so that we  
13 can provide more services.

14 CHAIRMAN LOCKYER: Questions?

15 SENATOR AYALA: I would like to ask, the Chairman  
16 mentioned the federal welfare reform legislation.

17 What impact is that going to have in California, that  
18 federal legislation?

19 MS. BRADSHAW: On the EDD, it'll have a fairly  
20 significant impact because right now, about 220,000 of people  
21 who register for our job service have some sort of aid  
22 associated with it. It'll probably go to 525,000, so that's a  
23 pretty significant increase.

24 SENATOR AYALA: The removal of benefits for illegal  
25 aliens, is that going to affect your department?

26 MS. BRADSHAW: Right now, it's against state as well as  
27 federal law to provide employment-related service for  
28 undocumented or illegal, so theoretically, we're already not



1 providing those services.

2 SENATOR AYALA: Refresh my mind. When a legal alien  
3 comes to this country, he comes from the quota system, and  
4 someone here will underwrite his activities while he's here.

5 Where does he earn these benefits that we're so  
6 concerned about? If he has someone here underwriting his costs  
7 so he won't be a burden to the government when he comes here as  
8 a legal alien, where do we end up? Somebody gets hurt, or they  
9 have a heart attack, or something that needs help, how do they  
10 get the benefits if they're not supposed to get them?

11 MS. BRADSHAW: Well, in terms of employment-related  
12 services, if they're here legally, and they have the -- they're  
13 authorized to work, they have the right to work, then they are  
14 entitled to the employment services.

15 If they're here illegally and do not have the right to  
16 work, then we're not supposed to be providing any  
17 employment-related services to them. And we verify that.

18 SENATOR AYALA: Just that reference to legal aliens?

19 MS. BRADSHAW: Yes.

20 SENATOR AYALA: You mentioned the impact on our state.

21 Do you have any plans as EDD Director for tracking down  
22 these employers or employees who are operating underground by  
23 failing to pay their payroll taxes? Are you going to go after  
24 these people that we need to be going after?

25 MS. BRADSHAW: Well, actually three years ago, the  
26 Joint Enforcement Strike Force deals with the underground  
27 economy, and it's a collaborative effort between three different  
28 or four different agencies, all dealing in the underground

1 economy.

2 SENATOR AYALA: There's a concerted effort to take care  
3 of these folks?

4 MS. BRADSHAW: Right. They've been concentrating on  
5 the construction industry, the bar and restaurant industry, auto  
6 repair, garment industry, industries where there's a high  
7 profile of people operating underground. There really has been  
8 a great deal of information that's gone into that, and a great  
9 deal of enforcement. In fact, almost 3500 inspections have  
10 occurred on that.

11 SENATOR AYALA: Is it legal for state to operate as  
12 counties do in going after these delinquent taxpayers for  
13 property tax? The counties can farm it out to some collection  
14 agency, and they get a percentage of that, but that's more than  
15 the county would get otherwise from these people that are  
16 delinquent on their property taxes.

17 Do you have any system like that, that could get  
18 people?

19 MS. BRADSHAW: One thing that we did when I was Labor  
20 Commissioner is, prior to licensing a garment manufacturer or a  
21 farm labor contractor, one thing we did was get verification  
22 that there was no outstanding unaddressed tax liabilities.  
23 Which, if there were, then we asked them to address them before  
24 we gave them the license.

25 With farm labor contractors, the IRS, for example, got  
26 almost \$20 million just off of farm labor contractors over the  
27 first three years of that particular program. So, there are  
28 definitely different ways of addressing that.

1           SENATOR AYALA: Thank you.

2           SENATOR BEVERLY: Any further questions by Members of  
3 the Committee? Senator Petris.

4           SENATOR PETRIS: Thank you, Mr. Chairman.

5           We have information regarding the State Auditor report  
6 on state agencies that you might want to comment on. We got the  
7 report just this month. The Auditor issued the report, saying  
8 that EDD and a number of other agencies were arranging for  
9 contracts without the normal competitive bid process. And the  
10 report is entitled, "State Contracting: Reforms Are Needed to  
11 Protect the Public Interest."

12           It points out that there are certain exemptions, but  
13 the agencies went way beyond the exemptions. One example is  
14 contracting with Cal State University without seeking  
15 competitive bids. The Auditor found that rather than using  
16 existing government resources, the departments have misused  
17 inter-agency agreements and exempt contracts to enter a  
18 sole-source contract with private parties.

19           Now this sole-source thing has popped up before in  
20 other agencies in our hearings here. There seems to me to be a  
21 trend, running away from competitive bidding and into  
22 sole-source stuff as much as possible.

23           The report described the state, the EDD, as using a  
24 CSU-affiliated foundation, which was eligible for an exemption,  
25 and they were funneling through the foundation.

26           It sounds here, that's all I know about it, what I read  
27 here, looks like an end run around the competitive bid  
28 requirement.



1 Are you familiar with that? Can you comment on it?

2 MS. BRADSHAW: Yes, I can comment on it.

3 There were two contracts, both of which, I believe,  
4 both of which I know occurred prior to my coming on.

5 I'm a firm believer in the competitive bidding process.  
6 Shortly after coming, I also made sure that we did not continue  
7 using the CSUS. In fact, I told CSUS that we would not be using  
8 them for purposes other than areas where they themselves were  
9 going to be doing the work. So, I think we have -- at least my  
10 position is --

11 SENATOR PETRIS: Put the brakes on that?

12 MS. BRADSHAW: It was my position when I was the Labor  
13 Commissioner, it's my position as EDD Director, and we will only  
14 use the California State University system when they themselves  
15 do the work.

16 SENATOR PETRIS: I didn't catch all your testimony  
17 about jobs. This is a job development department.

18 Did you give us any figures on new jobs, and where they  
19 are, how they're created?

20 MS. BRADSHAW: As of November of 1995, the state  
21 actually made up statistically all the jobs that were lost in  
22 the previous five years. Most of the jobs -- we are creating  
23 new jobs to the tune of about half a million each year, but  
24 that's a combination brand-new jobs, and jobs for which  
25 employees are leaving them, for example, retirement or death and  
26 not replacing them. So, there are new opportunities of just  
27 under a half a million jobs. In addition to that, the types of  
28 jobs they are depend on the location.



1           For instance, the service industry is a big job  
2 generator. The media and the entertainment industry is a huge  
3 job generator. Almost all industry sectors are increasing, some  
4 more rapidly than others, and it really depends on which area of  
5 the state that you're in. Some of the agricultural or the rural  
6 areas have more difficulty than do some of the more urban areas.

7           SENATOR PETRIS: How about mobility, especially when it  
8 comes to unemployment insurance? We don't use a movable base  
9 period in California to permit people more opportunity to draw  
10 the benefits while they're between jobs.

11           Could you comment on that? Are we improving that?

12           MS. BRADSHAW: The issue on terms of the alternate base  
13 period?

14           SENATOR PETRIS: Yes.

15           MS. BRADSHAW: The issue of the alternate base period,  
16 actually there was a lawsuit in the State of Illinois that was a  
17 Seventh Circuit decision that required the State of Illinois to  
18 use an alternate base period.

19           We believe that actually it's a state decision as  
20 opposed to a judicial decision, and we believe the state, as  
21 do -- almost all the governors have asked for federal  
22 legislation to make sure that it is a state's decision, and  
23 there are a lot of factors that go into it. And we think it is  
24 an issue that should be discussed at the state level.

25           SENATOR PETRIS: I'm not sure I'm on the same track.

26           There's another aspect of it I'm looking at here.  
27 First of all, it's based on the amount earned by the unemployed  
28 person during the first four --

1 MS. BRADSHAW: Of the last five.

2 SENATOR PETRIS: -- of the previous five quarters.

3 Sometimes they get a significant amount in the later  
4 quarters, including the fifth, but they don't get enough total  
5 to qualify for the benefits. That knocks them out of the  
6 eligibility.

7 I guess that's what you meant by movable base?

8 MS. BRADSHAW: Yes, the movable base.

9 What happens is, there are five quarters, and employers  
10 report it on a quarterly basis. That's why it goes by  
11 quarters. And there is a period of a lag period, a lag quarter,  
12 where the employer may not have reported the wages, so EDD  
13 doesn't know whether or not -- what wages are at issue, have  
14 been earned during that lag quarter. That's the lag quarter  
15 that's in question in the movable base period that you're  
16 talking about. They may have earned more, but EDD wouldn't  
17 necessarily know that.

18 And what the Appeals Court in the Seventh -- in  
19 Illinois said is, you have to find some way to get that  
20 information.

21 SENATOR PETRIS: We've had a history in California of  
22 underground economies, some of which are pretty good-sized  
23 businesses. They just don't show up on the books because they  
24 don't follow the law.

25 I guess part of the Department's mission is to track  
26 those down and get them on board. Is that situation getting  
27 better or worse? We seem to have it in pockets?

28 MS. BRADSHAW: Yes, it actually is, in certain

1 industries.

2 SENATOR PETRIS: Garment industry, and so forth.

3 MS. BRADSHAW: Garment, construction tends to have a  
4 high amount of underground economy.

5 As I was explaining to Senator Ayala, we have created,  
6 or it was created three or four years ago, three years ago  
7 actually, the Joint Enforcement Strike Force, which is a  
8 combination of four different agencies that work together,  
9 combining resources, doing joint inspections. We've done nearly  
10 3500 inspections over that period of time, concentrating in  
11 those industries that tend to operate underground.

12 In certain industries, such as construction, we've  
13 created a parallel program to kind of address some of the  
14 nuances that are in construction that may not be in other  
15 industries so that we can, in fact, find better ways of  
16 detecting the underground economy.

17 SENATOR PETRIS: Are you whittling it down?

18 MS. BRADSHAW: We are trying.

19 SENATOR PETRIS: No fish in the net yet.

20 MS. BRADSHAW: Well, actually, I think it's close to \$8  
21 million in additional tax dollars have been noted, and \$13  
22 million in labor law violations, or citation amounts in that  
23 period of time. So, I think we've made significant progress,  
24 but it's a big job.

25 CHAIRMAN LOCKYER: Did you mention earlier, I might  
26 have missed this, how many enforcement actions there've been  
27 with respect to the underground economy?

28 MS. BRADSHAW: I mentioned it, but I'll give you the



1 exact.

2 There have been 3,984 inspections, 2,565 Labor Code  
3 citations, for a total of \$13,330,000 in penalties, 1,595 pay  
4 roll audits for \$5,608,656 in unpaid taxes.

5 CHAIRMAN LOCKYER: That's since when?

6 MS. BRADSHAW: That's a two-year period.

7 CHAIRMAN LOCKYER: Do you know what the numbers would  
8 have been like for perhaps the previous cycle?

9 MS. BRADSHAW: It was a new, brand-new program.

10 CHAIRMAN LOCKYER: So, not much enforcement prior,  
11 unless by a complaint?

12 MS. BRADSHAW: Exactly, and it wasn't identified as  
13 necessarily being underground economy.

14 CHAIRMAN LOCKYER: I'm sorry, Senator. I got my  
15 answer, and you were in the middle of asking. Had you  
16 completed?

17 SENATOR PETRIS: There's one other question, which has  
18 escaped me.

19 CHAIRMAN LOCKYER: I'll ask another one while you find  
20 it.

21 Let me ask you about unemployment insurance. The  
22 unemployment insurance, I guess I'm mostly interested in more a  
23 statement of philosophy and perspective than anything, because  
24 obviously, whatever the law is, that's what you're obligated to  
25 administrate.

26 Do you have any particular thoughts about the system  
27 that we should be familiar with, its strengths or weaknesses,  
28 how the levels should be set if you were advising us as policy



1 makers with respect to UI? Are the levels too high, too low,  
2 whatever?

3 MS. BRADSHAW: Can I take it from two levels? One just  
4 administratively, and then we can talk about the benefit level.

5 CHAIRMAN LOCKYER: Yes.

6 MS. BRADSHAW: What we're trying to do now is make it  
7 easier to get through the process. There's almost --

8 CHAIRMAN LOCKYER: To qualify?

9 MS. BRADSHAW: To get through just to get the claim  
10 filed, for example. There's almost been kind of a rite of being  
11 unemployed, meaning a rite, R-I-T-E, that, you know, you don't  
12 feel unemployed unless you've spent four hours standing in line  
13 in an unemployment office.

14 What we're trying to do is do away with that, so that  
15 in fact you can file by phone. Rather than spending 128 minutes  
16 standing in one of our offices, you can, in fact, do it in 13.8  
17 minutes over the phone. So, what we're trying to do is take  
18 away kind of the bureaucratic process and get to the nuts and  
19 bolts of the operation.

20 CHAIRMAN LOCKYER: Is that why we get some complaints,  
21 though, from some communities, thinking counter service would be  
22 eliminated?

23 MS. BRADSHAW: Right, and in fact, that's really part  
24 of a problem that we almost created ourselves, in that what  
25 we're doing is changing the method of allowing people access to  
26 services. We're trying to give them a choice, that in fact you  
27 can file in person, or you can file by phone. And that kind of  
28 got translated into office closure, that's not exactly what we

1 are doing at all.

2 In fact, we're trying to find a better way to provide  
3 those services in light of the fact that we have dwindling  
4 resources, but the reality is, there's no reason that we can't  
5 find more customer-friendly ways of operating. What should  
6 drive it is the customer, not necessarily what we've always done  
7 or the bureaucracy. That's basically what we've been trying to  
8 do, is find different and more expeditious vehicles to getting  
9 our services to the public.

10 CHAIRMAN LOCKYER: Have there been office closures of  
11 significance in the last year?

12 MS. BRADSHAW: What we're doing is, we're taking  
13 facilities where -- we're trying to create multi-functional  
14 facilities so that we can maximize what resources we have. And  
15 those areas that require an individual contact, job service, for  
16 example, where you really need to talk to the individual, those  
17 we're trying to keep in the communities through the One Stops,  
18 through our own operation working in collaboration.

19 But areas where we can provide this service, like via  
20 mail or via phone, rather than paying for the expense of a  
21 building, what we're trying to do is go in with the community at  
22 provide those services. So, what we're looking at is not  
23 necessarily --

24 CHAIRMAN LOCKYER: I don't know what going into the  
25 community means?

26 MS. BRADSHAW: On the One Stop. In fact, putting all  
27 employment-related -- if we have eight agencies working together  
28 to provide a seamless -- we don't want to be over in a building

1 that's completely separate and has nothing to do with it. So,  
2 that's basically what we're talking about.

3 CHAIRMAN LOCKYER: But they'd still get the same  
4 services.

5 MS. BRADSHAW: Right. In fact, in some cases, we're  
6 trying to find better ways of giving them access to service.

7 CHAIRMAN LOCKYER: So, have there been offices closed?

8 MS. BRADSHAW: There have been buildings that have  
9 changed, yes.

10 CHAIRMAN LOCKYER: How many do you think?

11 MS. BRADSHAW: To tell truth, I don't know the number.

12 CHAIRMAN LOCKYER: Estimate? You probably would have  
13 heard complaints if there were serious numbers.

14 MS. BRADSHAW: Let me give you, and it was an example  
15 that you and I talked about the other day.

16 We got complaint that the -- in fact, it was the  
17 Oakland State Disability Insurance Building was closing, when in  
18 fact, it's not. What we're doing is finding a different way of  
19 providing the service.

20 And as I explained to your staff, we had the feeling  
21 that people who are sick or injured shouldn't have to come in to  
22 file a complaint, that they should be staying home, getting  
23 well, and filing the claim.

24 At the same time, though, what we're doing is, we're  
25 building a call center in downtown Oakland because we have a  
26 facility there that will accommodate that. And we're making the  
27 capital improvements there. So, at one hand, while we are  
28 changing the service in one area in Oakland, we are expanding



1 the building in another, but we're still not closing off any  
2 service. We're just changing the configuration on how we're  
3 operating.

4 So, I think it would be fair to say we've not closed  
5 services in any locations, although we have changed buildings.

6 CHAIRMAN LOCKYER: As you would anticipate next year,  
7 is there any federal cut of significant moneys?

8 MS. BRADSHAW: \$45 million in our administrative  
9 budget.

10 CHAIRMAN LOCKYER: Against how much?

11 MS. BRADSHAW: About just over 700 million.

12 CHAIRMAN LOCKYER: That's still pretty sizable. What  
13 will that make you do? How will you adjust to that?

14 MS. BRADSHAW: We put a hiring freeze in six or seven  
15 months ago. We've been looking at all of our operations to make  
16 sure that anything that we've cut out, we've asked for  
17 suggestions from the employees. We will be able to make those  
18 cuts without -- we will be able to make those cuts without any  
19 adverse impact, we believe, to -- significant adverse impact to  
20 any of our programs or to our own employees, our permanent  
21 staff.

22 CHAIRMAN LOCKYER: So, so far okay?

23 MS. BRADSHAW: Right. That's what we're planning for.  
24 I mean, that's one reason we have a strategic plan, is to make  
25 sure that, in fact, we plan for our future rather than having  
26 our future just happen to us.

27 CHAIRMAN LOCKYER: Now, you were in the middle of  
28 explaining about UI, and first the bureaucratic



1 administrative --

2 MS. BRADSHAW: The administrative side of it.

3 CHAIRMAN LOCKYER: Trying to make the system better.

4 What about the sort of substantive law of UI benefits,  
5 and what's an appropriate level? Are they too high or too low?

6 MS. BRADSHAW: In terms of the benefit levels.

7 You know, I think, as I've said in all of our program  
8 areas, I think all programs should be reviewed to make sure that  
9 they adapt to the changing situations. And I think welfare  
10 reform is a perfect example of looking at each program, whether  
11 it be state disability insurance, unemployment insurance,  
12 worker's comp., whatever, in light of what the changing  
13 environment is.

14 And while I know there's been some interest in the  
15 state disability insurance, there hasn't been, at least since  
16 I've been EDD Director, the same interest in the unemployment  
17 insurance.

18 And that isn't to say with welfare reform, as more  
19 people transition into the work, and you may have them on entry  
20 level jobs that have in and outs, periods of in and out, that  
21 there wouldn't be some necessity to look at the benefit levels.

22 CHAIRMAN LOCKYER: I understand that it's wise to  
23 periodically review.

24 What I'm trying to get at is not some commitment about  
25 future behavior at all, but simply if the Governor asked you for  
26 your best advice about SDI, about UI, what would your thoughts  
27 -- let's stay with UI for a moment -- what would your thoughts  
28 be.

1           Some have suggested, for example, there should be some  
2 automatic formula that ties it to whatever, manufacturing wage.  
3 There are different ideas about it.

4           Do you have any settled philosophy about those matters?

5           MS. BRADSHAW: I think I mentioned initially, I believe  
6 we ought to take most things off auto pilot because auto pilot  
7 doesn't necessarily allow us to adapt to situations.

8           I think what we should be doing is look at all our  
9 safety nets in light of changing environments, and I believe  
10 welfare reform is one of those issues that requires us to relook  
11 at some of those things.

12           I don't think necessarily tying it to any specific  
13 indicator from here to perpetuity necessarily allows us the  
14 flexibility to react to changing circumstances that are going to  
15 be regarded in the next three or four years.

16           CHAIRMAN LOCKYER: You know, it's interesting, because  
17 we do have some auto pilots, just as an aside, like we  
18 automatically index the personal income tax schedule, and other  
19 auto pilots that are of benefit to taxpayers.

20           I never hear about those from the administration. I  
21 only hear about the ones that involve some grant to a poor  
22 person.

23           But anyhow, nothing more specific you'd care to add on  
24 the UI benefits themselves? What would be an appropriate  
25 benefit, if it's too low or too high?

26           MS. BRADSHAW: No, not anything specific.

27           CHAIRMAN LOCKYER: Let me ask, SDI, I'm aware that  
28 there's been a recommendation, I think we all know that, to

1 provide some form of an increase. It's a little bit unclear  
2 what the amount is.

3 MS. BRADSHAW: It's working its way.

4 CHAIRMAN LOCKYER: Yes, so that we've heard about.  
5 There's something happening somewhere. I'm a little fuzzy about  
6 where. I think maybe over in the Assembly.

7 Let's shift to prevailing wage, because you did, in  
8 your former life, have some responsibility there, and I assume  
9 could wind up again being asked for advice and recommendations  
10 about the topic.

11 Can you assess for me the good and bad features, or  
12 what's the debate about with respect to prevailing wage in  
13 public projects?

14 MS. BRADSHAW: I can't -- prevailing wage is not an  
15 issue that I have been involved with in the last eight or nine  
16 months, or actually the last year. Prior to that, my  
17 responsibility was enforcement of the laws or the regulations  
18 that were already in effect, not the debate with regards to what  
19 they should or not be.

20 CHAIRMAN LOCKYER: So, you don't have an opinion about  
21 them?

22 MS. BRADSHAW: I can't comment on what's going on now  
23 because I don't know.

24 CHAIRMAN LOCKYER: I was not so much wanting for a  
25 factual description, but more just to try to understand your  
26 approach or philosophy.

27 MS. BRADSHAW: I think I can tell you what my approach  
28 and philosophy was with regards to the enforcement of the



1 prevailing wage. Maybe that would help us get to where you want  
2 to go.

3 I believe strongly in a level playing field. I believe  
4 strongly in a level playing field in any arena of labor law  
5 enforcement because I think the law abiding employer deserves to  
6 have the economic advantage, not those who are violating the  
7 law.

8 I believe that in investigating a prevailing wage  
9 claim, or any issue with regards to the labor law enforcement,  
10 that if the facts -- if you look at the facts, if the facts show  
11 a violation of the law, then you prosecute it to the fullest  
12 extent of the law. I think that would be -- I think that is  
13 consistent with the spirit of the prevailing wage law, and I  
14 certainly think it is within the spirit of any enforcement  
15 agency. I think it consistent with what the legislative intent  
16 was.

17 CHAIRMAN LOCKYER: Well, to the extent, I think, that  
18 you're suggesting to people it's good to obey the law, I can't  
19 disagree.

20 But I guess what I was trying for was a little more  
21 philosophy as to, if someone came to you and said, we want to  
22 change the law. Still be level playing field, but it's going to  
23 be a different level. You know, if there are impacts on the  
24 cyclical industries, the types of businesses involved, and  
25 quality of work, or any other consideration, public costs,  
26 whatever it might be, and how you would assess and weigh those  
27 factors.

28 If this is too remote from the job, you know, what



1 you'd normally be asked to do, then I don't want to force you to  
2 comment philosophically on something that you may never shall  
3 involved in.

4 MS. BRADSHAW: It certainly isn't anything to do with  
5 what I'm involved with now, and I wasn't asked the question when  
6 I was Labor Commissioner.

7 CHAIRMAN LOCKYER: And you never developed opinions  
8 about that while you were Labor Commissioner?

9 MS. BRADSHAW: I developed a lot of opinions while I  
10 was Labor Commissioner, and one of them was that, in fact,  
11 creating a level playing field was an important issue. That  
12 certainly the issues of what went into the law or the  
13 regulations was a debate that should be happening in a variety  
14 of venues, and taking into consideration factors such as  
15 cyclical industries or what not. But that was not necessarily  
16 an area in which -- that was not within my jurisdiction.

17 CHAIRMAN LOCKYER: That's a fair answer.

18 Looks like Senator Beverly doesn't have any questions.

19 SENATOR BEVERLY: No questions.

20 CHAIRMAN LOCKYER: I guess I did get a note that, just  
21 for record, we need to mention. You've seen this, too.

22 It is claimed that there was a problem with EDD  
23 submission for Title IV (c) funds for veterans CHIPRA employment  
24 programs that would have received some federal match.

25 Can you help us understand this whole thing?

26 MS. BRADSHAW: I'd be happy to.

27 We applied for the Title IV (c) grant, which is, as you  
28 say, the veterans grants. I believe the memo that you got said

1 that there was an untimely filing. That, in fact, is untrue.  
2 In fact, it was hand-delivered, so it was filed on time.

3 We were not issued a grant, even though we were rated  
4 at number one last year and basically the same grant. We did  
5 not receive it this year, as did several other -- five, I  
6 believe -- other states who also received grants last year did  
7 not receive them this year.

8 We have appealed that decision by DOL, and we are  
9 providing the grant moneys through alternative means so that our  
10 veterans are not without their training.

11 CHAIRMAN LOCKYER: It's what, a million?

12 MS. BRADSHAW: It's 850,000.

13 CHAIRMAN LOCKYER: You don't think there'll be any  
14 program interruption?

15 MS. BRADSHAW: We're trying to make sure that there's  
16 no program interruption.

17 CHAIRMAN LOCKYER: Anything that needs to be done to  
18 assist with that effort?

19 MS. BRADSHAW: Well, we, in conjunction with the other  
20 states, have filed an appeal because in fact one of states who  
21 received a grant this year also received one last year and was  
22 substandard even by DOL's estimation.

23 CHAIRMAN LOCKYER: Who was that?

24 MS. BRADSHAW: Hawaii. In fact, some states received  
25 grants where their total veteran population is less than 50,000,  
26 and of course we have several million in the State of  
27 California.

28 CHAIRMAN LOCKYER: Probably Hawaii has as lot, I would

1 guess. Maybe --

2 MS. BRADSHAW: But there were problems with their  
3 program.

4 CHAIRMAN LOCKYER: What do you think went wrong? Why  
5 did this occur?

6 MS. BRADSHAW: I don't know. What's why we've  
7 appealed. In fact, we're in the process of discovery now to  
8 find out the basis.

9 CHAIRMAN LOCKYER: How long does it take to resolve?

10 MS. BRADSHAW: I don't know. There's not that many  
11 appeals. I believe it should be sometime after the first of the  
12 year.

13 CHAIRMAN LOCKYER: I should also mention that I've had  
14 the opportunity to discuss with you Helix, Neiman-Marcus and  
15 Cuadra.

16 MS. BRADSHAW: Right.

17 CHAIRMAN LOCKYER: So, I'm not going into each of those  
18 cases because it seemed to me that you were able to explain the  
19 policy or decisions that were made and actions taken or not  
20 taken as either consistent with law or prior to your service.

21 MS. BRADSHAW: What ever combinations.

22 CHAIRMAN LOCKYER: Different reasons in each case. But  
23 I want to mention them so that people know that we're not  
24 ignoring those matters.

25 Okay, anyone present who wishes to comment? Somebody  
26 does, okay.

27 MR. ROSS: Mr. Chairman, Members of the Board, my name  
28 is Gary Ross. I'm the legislative representative for the



1 Department of California American Legion.

2 And at our last convention, our Employment Committee  
3 and our Commissions all agreed that we want to support.

4 CHAIRMAN LOCKYER: Okay, so there's a number of you  
5 present that are in the support category. Any opposition  
6 present? These are supporters? Okay.

7 MR. HARPER: Mr. Chairman, Members of the review  
8 committee, my name is Don Harper. I am with the California  
9 Employers Advisory Council. I am Chair of the Veterans  
10 Statewide Committee.

11 The Council and the Veterans Committee strongly  
12 supports Vicky Bradshaw for this important post, running EDD.  
13 She's come to our board meetings over the past six months and  
14 explained her game plan, what she wants to do with the  
15 Department, and we strongly support her confirmation today.

16 CHAIRMAN LOCKYER: Thank you, sir.

17 MS. BROYLES: Mr. Chairman and Members, I'm Julie  
18 Broyles from the California Chamber of Commerce.

19 We're here speaking in strong support of Vicky's  
20 confirmation as Director of EDD. We have found in previous work  
21 with her while she was the Labor Commissioner, as well as with  
22 her current duties with EDD, has always strived to be a fair and  
23 equitable person to work with, has tried very hard to see that  
24 there are customers on all sides, whether it's employees,  
25 unemployed workers, whether it's the employers, or people who  
26 are just entering the job market.

27 We have found that she has always looked to enforcement  
28 of current law, especially, again, when she was the Labor



1 Commissioner. We worked with her on the targeted inspection  
2 program and with the underground Strike Task Force Advisory  
3 group and again found her arguments very, very compelling that  
4 it is not fair, if you have people working under the table and  
5 underground, in trying to make sure that California is as  
6 competitive as it possibly can be.

7 We've also had the opportunity to work with Vicky on  
8 the Work Force Prep issues. We've worked with her on School to  
9 Career. We have worked with her in the Office of Work Force  
10 Policy. We've been able to work with her on the One Stop career  
11 center, and again, have been impressed that she's trying to make  
12 sure that everyone has equal access to supply new jobs and  
13 additional jobs to the California economy and make sure that  
14 employers can find the workers that they need to make California  
15 profitable as well.

16 For all of these reasons, we would ask for your support  
17 of her as the Director of EDD.

18 CHAIRMAN LOCKYER: Thank you.

19 I'd like to kind of limit the speeches, but mostly get  
20 people on the record.

21 MR. CORONA: Fine, Mr. Chairman. My name is Burt  
22 Corona. I am the Executive Director of Hermandad Mexicana  
23 Nacional, which is the largest association, membership  
24 organization, of undocumented, documented citizen immigrants.  
25 We have in our ranks all the immigrant populations that are  
26 Spanish speaking. We provide services, assistance through  
27 counties and through the state and the federal programs.

28 We support very whole-heartedly the confirmation of Ms.

1 Bradshaw. We observed her during her tenure as Labor  
2 Commissioner, and we found her to be very fair, and very strong  
3 for enforcement against violation of all the laws.

4 So, our organization is very, very much in support of  
5 her nomination.

6 CHAIRMAN LOCKYER: Thank you.

7 MR. WASHINGTON: Mr. Chairman, Members, Willie  
8 Washington with the California Manufacturers Association.

9 We are also in support of Ms. Bradshaw as Director of  
10 EDD for many of the same reasons that have already been  
11 articulated.

12 CHAIRMAN LOCKYER: Thank you.

13 MS. MORALES: Mr. Chairman and Members of the Rules  
14 Committee, my name is Marga Morales. I'm Deputy Labor  
15 Commissioner, one, out of the Targeted Industries Partnership  
16 Program, commonly known as TIPP. I've served the Division for  
17 16 years and under four different commissioners.

18 I would like to say with respect to Vicky Bradshaw, I  
19 would like to describe her as visionary, committed to her  
20 employees, courageous in the face of internal and external  
21 opposition, and an example of dedication. I personally have  
22 experienced under Vicky Bradshaw as the Labor Commissioner  
23 sensitivity to my needs for time off with my family, support of  
24 my efforts with legal advice and technical equipment, and  
25 communication of her appreciation for our efforts.

26 I'd like to conclude by saying that it's been an honor  
27 to serve under Vicky Bradshaw, and I request your approval.

28 Thank you.

1 CHAIRMAN LOCKYER: Thank you.

2 MR. MILLAN: Mr. Chairman, Members of the Committee, my  
3 name is Jose Millan. I'm Assistant Labor Commissioner with the  
4 State of California.

5 It's been my pleasure and honor to serve Vicky Bradshaw  
6 as the State Labor Commissioner. She is one of the fairest,  
7 most honest, trustworthy people I've ever known.

8 She also had the good taste and judgement to promote me  
9 to a managerial position. That shows her dedication to  
10 rewarding state service on the basis of merit.

11 CHAIRMAN LOCKYER: Are you an exempt or civil service?

12 MR. MILLAN: Civil service, sir.

13 And she has a very keen knack of doing the most  
14 wonderful things with fewer resources. She rises to every  
15 challenge, and I expect her to do the same as Director of EDD.

16 I urge her confirmation.

17 CHAIRMAN LOCKYER: How much time did you spend in your  
18 work assignments where you had to work together regularly?

19 MR. MILLAN: With Vicky Bradshaw?

20 CHAIRMAN LOCKYER: Yes, how frequent was contact?

21 MR. MILLAN: Frequent. I worked with her five days,  
22 six days, seven days a week.

23 CHAIRMAN LOCKYER: So, virtually every day of the  
24 year?

25 MR. MILLAN: Yes, virtually every day of the year.

26 CHAIRMAN LOCKYER: I just want to be honest about this.  
27 I have a funny reaction. It's like someone ran their  
28 fingernails down the blackboard.



1 I wonder about how that is for someone in personnel  
2 practices, frankly, because it's just a style thing that  
3 shouldn't be sufficient, other than the fact that she's been  
4 haughty with various of my employees and I resent it.

5 But you worked with her, and you didn't pick that kind  
6 of stuff up?

7 MR. MILLAN: Not at all. She is actually not a haughty  
8 person at all.

9 CHAIRMAN LOCKYER: Well, she has been whenever she's  
10 had dealings with the Legislature universally. So, that's a  
11 problem.

12 But it's separate from that. It's just some kind of  
13 chemistry thing that's like, I wouldn't want to be around this  
14 person very much. That's fine. She can be in a different  
15 building somewhere, as far as I'm concerned, and do her job.

16 But there's just something that gets me. Is this crazy  
17 to say? I don't know what it is.

18 Anyhow, someone who was a daily contact, daily  
19 subordinate employee, it was cool.

20 MR. MILLAN: Cool.

21 She has very high standards, and she expects people to  
22 meet them.

23 CHAIRMAN LOCKYER: That's okay. That's good.

24 MR. MILLAN: Thank you.

25 CHAIRMAN LOCKYER: Sorry to be so frank about these  
26 assessments, but I guess you understand. It's part of my job.

27 MS. SAPIEN: I'm Hermelinda Sapien, Deputy Director Of  
28 the Center for Employment Training. I have been with CET for 28



1 years.

2 I am here to voice support for Victoria Bradshaw.  
3 Early in her appointment, she spent a whole day at the Center  
4 for Employment and Training, getting to know staff and students,  
5 and we feel that she has really made a commitment to help  
6 farmworkers in advancing their training opportunities.

7 CHAIRMAN LOCKYER: How did they do it? How did they  
8 help, other than spending a day there?

9 MS. SAPIEN: Her Department has made sure that  
10 Title III funds, which have been geared to train dislocated  
11 workers, that farmworkers get a share of that.

12 CHAIRMAN LOCKYER: Was that not true prior?

13 MS. SAPIEN: No, it had not happened before.

14 CHAIRMAN LOCKYER: How much funding comes that way?

15 MS. SAPIEN: To our program, close to \$3 million. We  
16 serve 18 counties.

17 CHAIRMAN LOCKYER: I think I'd support her in that  
18 circumstance, too. Thank you.

19 Who's next?

20 MR. FLORES: Good afternoon, Honorable Chairman.

21 CHAIRMAN LOCKYER: Everybody has a pin. All these  
22 people have a pin that come up here.

23 MR. FLORES: Would you like this pin.

24 CHAIRMAN LOCKYER: No, no. I'm just curious what they  
25 all are.

26 MR. FLORES: It's our association and our individual  
27 agencies.

28 CHAIRMAN LOCKYER: They're pretty.

1 MR. FLORES: Honorable Chairman and distinguished  
2 Senators of the Committee, thank you for the opportunity to  
3 address you today. My name is Ernie Flores. I'm here today  
4 representing La Cooperativa Campesina de California. I am Vice  
5 Chairman of La Cooperativa and also the Executive Director of  
6 the Central Valley Opportunity Center. That's this pin here.

7 I'm here today to speak in support of Victoria  
8 Bradshaw's appointment to the position of Director of the State  
9 Employment Development Department.

10 La Cooperativa Campesina is a public nonprofit  
11 corporation that serves as a statewide association for a network  
12 of community-based organizations. Our membership consists of  
13 the following agencies: the Center for Employment and Training;  
14 California Human Development Corporation; the Central Valley  
15 Opportunities Center; Proteus, Inc.; and Employers Training and  
16 Resource Center. We cover the entire state with services,  
17 employment training services, educational services, support  
18 services, social services, housing and other services to migrant  
19 and seasonal farmworkers and other low-income persons via  
20 competitive grants and contracts awarded by various federal,  
21 state, local, and private organizations.

22 The executive staff of La Cooperativa Campesina and its  
23 member agencies has worked with Victoria Bradshaw for several  
24 years in her capacity as State Labor Commissioner, member of the  
25 Farmworker Coordinating Council, and in her current position as  
26 Director of the Employment Development Department. Throughout  
27 our professional relationship with Victoria Bradshaw, we have  
28 found her to be accessible, open-minded, fair, trustworthy and

1 honest. Even during those times when she had supported a  
2 different position than the one advocated by La Cooperativa  
3 Campesina, she has always been forthright and honorable in her  
4 decision.

5 Accessibility, open and fair mindedness,  
6 trustworthiness and honesty are traits in an EDD Director that  
7 should not just be sought or wished for. They are traits that  
8 are absolutely necessary and vital to the position. Victoria  
9 Bradshaw possesses those traits, and for that reason I urge you  
10 to confirm her appointment.

11 CHAIRMAN LOCKYER: Senator Petris.

12 SENATOR PETRIS: I want to tell everybody that's  
13 waiting in line, I think you were all in the last row and you  
14 didn't hear it, but the Chair said the rest of the people coming  
15 up here, just tell us who you are, your organization, and  
16 whether you're supporting or opposing.

17 Now, we're getting a big, long, very nice, but  
18 inappropriate under this agenda's time limit, speech. So, I  
19 would appreciate if you could follow the Chair's instruction.  
20 Give your name, your organization, and whether you're in favor  
21 or not.

22 We assume you're going to say nice things about her or  
23 you wouldn't be in favor. We haven't heard the noes; there  
24 probably aren't any. Anyway, that's a given.

25 It's just to identify the various people and  
26 organizations who are lining up. We've got a long  
27 agenda.

28 MR. FLORES: I am in support.



1           SENATOR PETRIS: With all due respect, I wanted to make  
2 that observation.

3           CHAIRMAN LOCKYER: Thank you, Senator, for helping  
4 maintain our schedule.

5           I heard one thing I wanted to ask about, which is,  
6 despite the fact that you you've disagreed with her decisions,  
7 what's an example?

8           MR. FLORES: Well, funding for the Title III migrant  
9 and seasonal farmworker program. Maybe some of the programs on  
10 the Farmworker Coordinating Council where we -- the constituency  
11 that we serve, where we wanted more programs made available that  
12 might not have come to be.

13           The decisions were always honest and forthright. We  
14 didn't always get what we were advocating for. Those types of  
15 things.

16           CHAIRMAN LOCKYER: Was there more than there used to  
17 be?

18           MR. FLORES: Oh, yes, definitely. The Title III  
19 programs are demonstration and pilot programs. It's the first  
20 time for that type of funding, and we're having a lot of success  
21 with those programs.

22           CHAIRMAN LOCKYER: I very much like what the  
23 Cooperativa does. Good luck to you, sir.

24           MR. FLORES: Thank you, Senator.

25           MS. BRADSHAW: I'll be happy to give you an EDD pin  
26 also, if you'd like.

27           CHAIRMAN LOCKYER: You didn't wear one.

28           MS. BRADSHAW: No, I didn't wear one today, but I'll be



1 happy to supply you with one.

2 MR. ORTIZ: I'm George Ortiz. I'm the Corporate  
3 President of the California Human Development Corporation, also  
4 Chair of the Western Lands of Farmworker Advocates, which is an  
5 that covers five states in western United States. Also, I'm a  
6 member of the California Farmworker Coordinating Services  
7 Council. That's where I met Vicky Bradshaw some years back.

8 To make it short, we're very much, the people I  
9 represent, very much in favor of her appointment and her  
10 confirmation.

11 CHAIRMAN LOCKYER: Thank you, sir.

12 You've got two pins.

13 MR. BIRD: Good afternoon, Mr. Chairman and esteemed  
14 Members of the panel.

15 Just for your edification and illumination, the upper  
16 pin is a Marine Corps.

17 CHAIRMAN LOCKYER: That one I could tell.

18 MR. BIRD: Good, that's good. I'm glad our eyesight  
19 has improved.

20 The second one is the pin that denotes the Vietnam  
21 Veterans of California, and that's the emblem of an organization  
22 which I work for.

23 Today I'm here as President of the Veterans Employment  
24 Committee here in Sacramento. And we firmly support Vicky  
25 Bradshaw, and we urge you to make her confirmation.

26 You might -- many of you might have heard that there's  
27 a phrase in the Marine Corps is called "Gung Ho." Usually it  
28 means somebody that's very assertive and very committed works

1 hard.

2 But also, you may not know, is that "Gung Ho" is really  
3 a Chinese word, and it means working together. I think Vicky  
4 Bradshaw meets both of those. She's very -- she's willing to  
5 work together with a lot of people.

6 She was very decisive in making the decision to put the  
7 other moneys available for the IV(c) programs here in  
8 California. Without her, it may have taken a long time or may  
9 not have happened.

10 So, with that, I commend your confirmation. Thank  
11 you.

12 MR. WILLIAMS: Mr. Chairman and Members of the  
13 Committee, I'll make this the speech about my size, short, right  
14 to the point.

15 I am Charles Williams, Chairperson for Northern  
16 California Veterans Employment Committee, which includes 14  
17 counties of veterans.

18 We strongly urge you to approve the confirmation. She  
19 has shown at various meetings that she has attended of our  
20 committee that she is an advocate for veterans, and we certainly  
21 need that. I need not tell you the plight of the veterans.

22 Thank you.

23 CHAIRMAN LOCKYER: Thank you, sir. Oh, a question.

24 SENATOR PETRIS: Question.

25 I'd like to have your address before you leave. My  
26 employment in my present capacity is soon terminating, and I  
27 want to know where to go to file as a veteran.

28 [Laughter.]

1 MR. WILLIAMS: All right. Currently, as soon as you  
2 become unemployed, I would suggest strongly that you go to the  
3 Richmond Employment office, and you look for one of the VERs.  
4 If they're not available, I'll leave you my card and you can  
5 contact me.

6 SENATOR PETRIS: Thank you very much.

7 MR. WILLIAMS: You're welcome.

8 CHAIRMAN LOCKYER: Next, please.

9 MR. JONES: Mr. Senator, Members of the Committee, my  
10 name Michael Jones. I'm the Director of Research and  
11 Development with Proteus, Incorporated, and also the Secretary  
12 of the Board of Directors of the Association of Farmworker  
13 Opportunity Programs.

14 I'm here this afternoon to express my support for Vicky  
15 Bradshaw, and my wish that your Committee support her  
16 confirmation.

17 And if you could, I'd like to leave some written  
18 comments.

19 CHAIRMAN LOCKYER: Certainly. Give them to the  
20 Sergeant.

21 MR. JONES: Thank you, Senator.

22 CHAIRMAN LOCKYER: Thank you very much.

23 MR. REECE: Good afternoon, Mr. Chairman, fellow  
24 Senators. I'm here as the -- count them all.

25 CHAIRMAN LOCKYER: About 12?

26 MR. REECE: I'm here as the State Employment Committee  
27 Member for the AmVets. We strongly endorse and support  
28 Victoria.

1 CHAIRMAN LOCKYER: What's this one.

2 MR. REECE: That's the Vietnam Veterans Memorial, made  
3 from the Memorial itself.

4 CHAIRMAN LOCKYER: Very nice. You're supportive?

5 MR. REECE: Absolutely, yes.

6 CHAIRMAN LOCKYER: Next.

7 MR. HALSEY: Thank you, Mr. Chairman and Members.

8 I represent the Disabled American Veterans as its past  
9 State Commander and its 105,000 Members.

10 We strongly support the appointment of Vicky Bradshaw.

11 Two of my colleagues had to leave early to catch a  
12 flight, but they did want to let you know that they were here.  
13 That's Peter Cameron with the Vietnam Vets of California, and  
14 also Rich Bartelow, the Operations Manager for the Vietnam Vets  
15 of San Diego. They fully support Vicky's confirmation. I think  
16 you have letters to that effect.

17 CHAIRMAN LOCKYER: Yes, we do. Thank you.

18 The IV(c) money, obviously there was some grants to the  
19 Farmworker Employment and Displaced Worker Program.

20 Had the money, the total amount, expanded, or were  
21 there diversions from programs that used to receive funding?

22 MS. BRADSHAW: No, it came out of Governor's 40 percent  
23 discretionary money. Those we set aside for situations such as  
24 the farmworkers. The One Stop is another example where we set  
25 aside specific funds for that.

26 CHAIRMAN LOCKYER: My question is, were there losers?  
27 Is there some program that used get funded that didn't, or did  
28 the total amount of money expand.



1           Usually we hear from losers, but we haven't heard  
2 complaints.

3           MS. BRADSHAW: No, because what we're trying to do is  
4 manage the money more effectively, and we're going after  
5 national moneys more frequently, or as many times as we possibly  
6 can.

7           CHAIRMAN LOCKYER: So that the pot expanded?

8           MS. BRADSHAW: Our pot actually is not more than it was  
9 last year. We're just trying to find better ways of managing it  
10 so that in fact we get more bang for the buck, in fact, going  
11 after other grants in addition to just using our 40 percent  
12 discretionary money, and using the discretionary money where we  
13 truly have discretion.

14          CHAIRMAN LOCKYER: But the discretionary money didn't  
15 expand.

16          MS. BRADSHAW: No, it didn't.

17          CHAIRMAN LOCKYER: But there was other new money  
18 brought in?

19          MS. BRADSHAW: We're looking -- right. For instance,  
20 we're doing collaboration with multiple SDAs, going after  
21 National Reserve Account grants, those kind of things, so that  
22 we have, hopefully, access for more moneys.

23          But the 40 percent did not expand.

24          CHAIRMAN LOCKYER: Within the 40 percent pot of money,  
25 were there programs that used to be funded that were cut?

26          MS. BRADSHAW: Not so far, but we're only in certain  
27 process of the year.

28          They have to use up their formulaic money. They get 60

1 percent of the 40 percent grants, plus they get Title II moneys,  
2 and they have to use up -- each SDA has to use up their own 60  
3 percent before they can apply for a 40 percent. So, it really  
4 is determined at the local level.

5 People who may have applied last year for discretionary  
6 money may not need it this year.

7 CHAIRMAN LOCKYER: Okay, other questions from Members.

8 Did you want to close, say anything in closing?

9 MS. BRADSHAW: No.

10 CHAIRMAN LOCKYER: What I'm going to recommend to the  
11 Committee, particularly to the employer lobbyists who are  
12 present who have made their opinions known, I'd recommend that  
13 they get busy working the Assembly on the SDI measure. That's  
14 obviously not related to this confirmation, but something that  
15 just came to mind that I ought to recommend to you.

16 I'd just like to take a little time to read through and  
17 think about the testimony, allow others that may want to come  
18 forward and offer comments to do that before we go to vote, I  
19 would assume before the end of the month.

20 Thank you.

21 SENATOR AYALA: When does her term expire?

22 CHAIRMAN LOCKYER: December.

23 MS. BRADSHAW: December third.

24 CHAIRMAN LOCKYER: When are we back?

25 MS. BRADSHAW: December second.

26 CHAIRMAN LOCKYER: That gives us a lot of time. I  
27 think we can deal with it before the end of August.

28 Those that have been unhelpful in the Assembly might

1 decide to get a little more helpful if they expect us to act on  
2 things they care about.

3 Thank you.

4 [Thereupon. This portion of the  
5 Senate Rules Committee hearing was  
6 terminated at approximately 5:25 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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29<sup>th</sup> day of August, 1996.

  
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